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Contents

Federal Register

Vol. 64, No. 169

Wednesday, September 1, 1999

Agricultural Marketing Service
RULES
Milk marketing orders:
New England et al., 47897–48021

Agricultural Research Service
NOTICES
Committees; establishment, renewal, termination, etc.:
National Genetic Resources Advisory Council, 47759

Agriculture Department
See Agricultural Marketing Service
See Agricultural Research Service
See Grain Inspection, Packers and Stockyards Administration

Air Force Department
NOTICES
Privacy Act:
Systems of records, 47776–47778

Antitrust Division
NOTICES
National cooperative research notifications:
EMTEC: Enabling Technologies for Lean Manufacturing of Hardened Steel Components, 47867–47868
Siemens Westinghouse: Ceramic Matrix Composites for Advanced Engine Components, 47868

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Low Income Home Energy Assistance Program; 1998 FY funds reallotment; correction, 47842
Meetings:
President's Committee on Mental Retardation, 47842

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Alabama, 47760
Arkansas, 47760–47761
Delaware, 47761
Florida, 47761
Oklahoma, 47761

Coast Guard
PROPOSED RULES
Drawbridge operations:
New Jersey, 47751–47752
Ports and waterways safety:
Tampa Bay, FL; safety zone, 47752–47754
NOTICES
Meetings:
Merchant Marine Personnel Advisory Committee, 47889–47890

Commerce Department
See Economics and Statistics Administration
See Export Administration Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
China, 47771–47772
United Arab Emirates, 47772–47773

Commodity Futures Trading Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 47773
Meetings; Sunshine Act, 47773–47774

Community Development Financial Institutions Fund
NOTICES
Grants and cooperative agreements; availability, etc.:
Bank Enterprise Award Program, 48061–48065

Corporation for National and Community Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 47774–47775

Defense Department
See Air Force Department
See Defense Logistics Agency

Defense Logistics Agency
NOTICES
Privacy Act:
Systems of records, 47778–47779

Economics and Statistics Administration
NOTICES
Senior Executive Service:
Performance Review Board; membership, 47761

Education Department
RULES
Special education and rehabilitative services:
Projects with Industry Program, 48051–48059
NOTICES
Agency information collection activities:
Proposed collection; comment request, 47779
Grants and cooperative agreements; availability, etc.:
National Institute on Disability and Rehabilitation Research—
Disability and Rehabilitation Research Projects and Centers Program, 47779–47780
Special education and rehabilitative services—
Interpreters for individuals who are deaf or hard of hearing and individuals who are deaf-blind; training program, 48067–48073

Employment and Training Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Job Training Partnership Act—
H-1B technical skill training programs; correction, 47868–47869

Energy Department
See Federal Energy Regulatory Commission

NOTICES
Environmental statements; availability, etc.:
Rocky Flats Environmental Technology Site, CO; plutonium residues and scrub alloy storage management, 47780–47782

Environmental Protection Agency
RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Massachusetts; withdrawn, 47680
Air quality implementation plans; approval and promulgation; various States:
Alaska, 47674–47679
Virginia, 47670–47674
Hazardous waste program authorizations:
Indiana, 47692–47696
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Chlorfenapyr, 47689–47692
Cymoxanil, 47687–47689
Difenoconazole, 47680–47687
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Alaska, 47754
Virginia, 47754
Hazardous waste program authorizations:
Indiana, 47755
Water pollution; effluent guidelines for point source categories:
Publicly owned treatment works, 47755
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 47783–47784
Meetings:
Effluent Guidelines Task Force, 47784
Pesticide, food, and feed additive petitions:
Agricultural Research Service, 47788–47791
Ecolab Inc., 47791–47795
Interregional Research Project No. 4 et al., 47795–47806
Pesticide programs:
Organophosphates; risk assessments and public participation in risk management—
Ethoprop, fenamiphos, phorate, and terbufos, 47784–47786
Pesticide registration, cancellation, etc.:
Bonide Products Inc. et al., 47786–47788
Superfund program:
Prospective purchaser agreements—
Canton Industrial Corp. Site, IL, 47806–47807
Toxic and hazardous substances control:
Lead-based paint activities in target housing and child-occupied facilities; State and Indian Tribe authorization applications—
Illinois, 47807–47810

Export Administration Bureau
RULES
Export administration regulations:
Commercial charges and devices containing energetic materials; exports and reexports, 47666–47669
NOTICES
Meetings:
Materials Technical Advisory Committee, 47761–47762
President's Export Council, 47762

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 47653–47658
Cessna, 47658–47660
Dornier, 47651–47653
Dowty Aerospace Propellers, 47661–47663
Short Brothers, 47660–47661
Airworthiness standards:
Special conditions—
Rockwell Collins; Boeing Model 737-300/-400/-500 series airplanes, 47649–47651
Class C and Class D airspace, 47663–47664
Class D airspace; correction, 47664
Class E airspace, 47664–47665
Restricted areas, 47665–47666
PROPOSED RULES
Airworthiness directives:
Aircraft Belts, Inc., 47715–47717
Class E airspace, 47718–47719
NOTICES
Passenger facility charges; applications, etc.:
Dane County Regional Airport, WI, 47890
Pullman-Moscow Regional Airport, WA, 47890–47891

Federal Communications Commission
RULES
Common carrier services:
International settlement rate benchmarks, 47699–47702
Television broadcasting:
Advanced television (ATV) systems—
Digital television service; channel allotments; impact upon existing television service; correction, 47702
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 47810–47811
Common carrier services:
Wireless telecommunications services—
Wireless E911 service improvements report; comment request, 47811
Rulemaking proceedings; petitions filed, granted, denied, etc., 47811

Federal Deposit Insurance Corporation
NOTICES
Agency information collection activities:
Proposed collection; comment request, 47811–47812

Federal Emergency Management Agency
RULES
Disaster assistance:
Major disaster and emergency declarations; Governors' requests; evaluation, 47697–47699
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 47812–47813
Flood insurance program:
Letters of Map Revisions Based on Fill requests; interim procedures, 47813–47815

Federal Energy Regulatory Commission
NOTICES
Hydroelectric applications, 47782–47783

Federal Highway Administration
RULES
Motor carrier safety standards:
  Parts and accessories necessary for safe operation—
    Trailers and semitrailers weighing 10,000 pounds or more and manufactured on or after January 26, 1998; rear impact guards and protection requirements, 47703–47709
PROPOSED RULES
Transportation Equity Act for 21st Century; implementation:
  Federal lands highway program; transportation planning procedures and management systems—
    Fish and Wildlife Service and refuge roads program, 47741–47744
    Forest Service and forest highway program, 47744–47746
    Indian Affairs Bureau and Indian reservation roads program, 47746–47749
    National Park Service and park roads and parkways program, 47749–47751

Federal Maritime Commission
NOTICES
Agreements filed, etc., 47815
Freight forwarder licenses:
  Langham Transport Services et al., 47815

Federal Reserve System
NOTICES
Banks and bank holding companies:
  Change in bank control, 47816
  Permissible nonbanking activities, 47816

Federal Trade Commission
PROPOSED RULES
Trade regulation rules:
  Home insulation; labeling and advertising, 48023–48049
NOTICES
Premerger notification waiting periods; early terminations, 47816–47841

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
  Bald eagle
    Hearings, 47755–47756
NOTICES
Endangered and threatened species permit applications, 47855–47856
Environmental statements; availability, etc.:
  Incidental take permits—
    Volusia County, FL; Florida scrub-jay and Eastern indigo snake, 47856–47857
Marine mammals:
  Incidental taking; authorization letters, etc.—
    Oil and gas industry activities; polar bears and Pacific walruses, 47857

Food and Drug Administration
RULES
Food additives:
  Adjuvants, production aids, and sanitizers—
    Phosphorothioic acid, 47669–47670
Organization, functions, and authority delegations:
  Center for Biologics Evaluation and Research, 47669
PROPOSED RULES
Administrative practice and procedure:
  Ozone-depleting substances use; essential use determinations, 47719–47741
NOTICES
Agency information collection activities:
  Reporting and recordkeeping requirements, 47842
Food additive petitions:
  Goodyear Tire & Rubber Co., 47843
Meetings:
  California Food and Agriculture Department and Association of American Feed Control Officials—
    Feed safety and compliance with animal protein prohibited in ruminant feed; workshop, 47843
  Medical Devices Advisory Committee, 47843–47844
Reports and guidance documents; availability, etc.:
  Antiretroviral drugs using plasma HIV RNA measurements; accelerated and traditional approval; clinical considerations; industry guidance, 47844–47845
  Center for Food Safety and Applied Nutrition; program priorities; comment request, 47845–47846
  Medical devices—
    Least burdensome means to market; evidence models, 47846–47847
  Test results invalidation when using licensed and 510(k) cleared bloodborne pathogen assays to test donors; revised recommendations; industry guidance, 47847

Grain Inspection, Packers and Stockyards Administration
NOTICES
Agency designation actions:
  Various States, 47759–47760

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
Agency information collection activities:
  Submission for OMB review; comment request, 47841–47842

Health Resources and Services Administration
NOTICES
Agency information collection activities:
  Proposed collection; comment request, 47847–47849
Grants and cooperative agreements; availability, etc.:
  Scholarships for Disadvantaged Students Program, 47849–47853

Indian Affairs Bureau
NOTICES
Tribal-State Compacts approval; Class III (casino) gambling:
  Burns-Paiute Tribe, OR, 47857–47858
  Northern Cheyenne Tribe, MT, 47858

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Reclamation Bureau

Internal Revenue Service
NOTICES
Meetings:
  Art Advisory Panel, 47891–47892

International Trade Administration
NOTICES
Antidumping:
Antifriction bearings (other than tapered roller bearings) and parts from—
Italy and Japan, 47764
Melamine from—
Japan, 47764–47765
Polychloroprene rubber from—
Japan, 47765–47766
Polyester staple fiber from—
Korea and Taiwan, 47766
Sebacic acid from—
China, 47766–47767
Antidumping and countervailing duties:
Five-year (sunset) reviews—
Final results and revocations, 47762–47763
Initiation of reviews, 47767–47769
Meetings:
President's Export Council, 47767

International Trade Commission
NOTICES
Import investigations:
Beer products, 47862
Carbon steel products from—
Various countries, 47862–47865
Ferrosilicon from—
Various countries, 47865–47866
Structural steel beams from—
Various countries, 47866–47867

Justice Department
See Antitrust Division
See Juvenile Justice and Delinquency Prevention Office
NOTICES
Pollution control; consent judgments:
Aiken County Forfeited Land Commission and Aiken County, SC, 47867

Juvenile Justice and Delinquency Prevention Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 47868

Labor Department
See Employment and Training Administration

Land Management Bureau
NOTICES
Public land orders:
Colorado, 47858
Recreation management restrictions, etc.:
Arizona; Long-Term Visitor Area Program, 47858–47860
Moffat, Pugsley, and Lowry Bridge Access Sites, MT; supplementary rules, 47860

National Aeronautics and Space Administration
NOTICES
Inventions, Government-owned; availability for licensing, 47869
Meetings:
Advisory Council
Space Science Advisory Committee, 47869

National Credit Union Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 47869–47870

National Highway Traffic Safety Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 47891

National Institute of Standards and Technology
NOTICES
Meetings:
Computer System Security and Privacy Advisory Board, 47769
Malcolm Baldrige National Quality Award—
Panel of Judges, 47769–47770

National Institutes of Health
NOTICES
Meetings:
National Human Genome Research Institute, 47854
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 47854
National Institute of Environmental Health Sciences, 47854–47855

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pollock, 47714
Atlantic highly migratory species—
Large coastal shark, 47713–47714
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish, 47711–47713
PROPOSED RULES
Fishery conservation and management:
Atlantic coastal fisheries cooperative management—
American lobster, 47756–47758
NOTICES
Grants and cooperative agreements; availability, etc.:
Collaborative Science, Technology, and Applied Research Program; correction, 47770
Meetings:
Gulf of Mexico Fishery Management Council, 47770–47771

National Science Foundation
NOTICES
Committees; establishment, renewal, termination, etc.:
Public Service Award Committee, 47870
Meetings:
Advanced Computational Infrastructure and Research Special Emphasis Panel, 47870

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Heritage Minerals, Inc., 47872–47877
Applications, hearings, determinations, etc.:
Southern Nuclear Operating Co., Inc., 47870–47872

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Reclamation Bureau
NOTICES
Environmental statements; notice of intent:
Grassland Bypass Project, CA; continuation, 47860–47862

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 47878–47881
Chicago Board Options Exchange, Inc., 47881–47882
Depository Trust Co., 47882–47883
New York Stock Exchange, Inc., 47883–47885
Philadelphia Stock Exchange, Inc., 47885–47888

Small Business Administration
NOTICES
Disaster loan areas:
Nebraska, 47888

Social Security Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 47888
Organization, functions, and authority delegations:
Deputy Commissioner Office, Operations, 47888–47889

Surface Transportation Board
RULES
General provisions:
Miscellaneous amendments, 47709–47711

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
NOTICES
Agency information collection activities:
Proposed collection; comment request, 47775–47776

Treasury Department
See Community Development Financial Institutions Fund
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 47892
Submission for OMB review; comment request, 47892–47894
Meetings:
Cemeteries and Memorials Advisory Committee, 47894–47895

Separate Parts In This Issue

Part II
Department of Agriculture, Agricultural Marketing Service, 47897–48021

Part III
Federal Trade Commission, 48023–48049

Part IV
Department of Education, 48051–48059

Part V
Department of Housing and Urban Development, Community Development Financial Institutions Fund, 48061–48065

Part VI
Department of Education, 48067–48073

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
1000.....47898
1001.....47898
1002.....47898
1004.....47898
1005.....47898
1006.....47898
1007.....47898
1012.....47898
1013.....47898
1030.....47898
1032.....47898
1033.....47898
1036.....47898
1040.....47898
1044.....47898
1046.....47898
1049.....47898
1050.....47898
1064.....47898
1065.....47898
1068.....47898
1076.....47898
1079.....47898
1106.....47898
1124.....47898
1126.....47898
1131.....47898
1134.....47898
1135.....47898
1137.....47898
1138.....47898
1139.....47898

14 CFR
25.....47649
39 (6 documents) 47651, 47653, 47656, 47658, 47660, 47661
71 (5 documents) 47663, 47664, 47665
73.....47665

Proposed Rules:
39.....47715
71.....47718

15 CFR
742.....47666
774.....47666

16 CFR

Proposed Rules:
460.....48024

21 CFR
5.....47669
178.....47669

Proposed Rules:
2.....47719

23 CFR

Proposed Rules:
Ch. I (4 documents).....47741, 47744, 47746, 47749

33 CFR

Proposed Rules:
117.....47751
165.....47752

34 CFR
379.....48052

40 CFR
52 (2 documents) 47670, 47674
62.....47680
180 (3 documents) 47680, 47687, 47689
271.....47692

Proposed Rules:
52 (2 documents) 47754
271.....47755
403.....47755

44 CFR
206.....47697

47 CFR
63.....47699
73.....47702
74.....47702

49 CFR
393.....47703
1000.....47709
1001.....47709
1004.....47709

50 CFR
622.....47711
635.....47713
679.....47714

Proposed Rules:
17.....47755
697.....47756

Rules and Regulations

Federal Register
Vol. 64, No. 169
Wednesday, September 1, 1999

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–163; Special Conditions No. 25–147–SC]

Special Conditions: Rockwell Collins; Boeing Model 737–300/–400/–500 Series Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Boeing Model 737–300/–400/–500 series airplanes modified by Rockwell Collins. These modified airplanes will have a novel or unusual design feature associated with the Rockwell Collins Multi-Mode Receiver (MMR) System. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is August 23, 1999. Comments must be received on or before October 1, 1999.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–114), Docket No. NM–163, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM–163. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2145; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

FAA's Determination as to Need for Public Process

The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because those procedures would significantly delay issuance of the approval design and, thus, the delivery of the affected aircraft. (The aircraft are scheduled for delivery in mid-September 1999.)

In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. Thus, the FAA has previously provided the public with a number of opportunities to comment on proposed special conditions that are substantively identical to those at issue; and the FAA is reasonably assured that all interested members of the public have had an opportunity to comment and that their comments have been fully considered. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Although this action is in the form of final special conditions and, for the reasons stated above, is not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket NM–163.'' The postcard will be date stamped and returned to the commenter.

Background

On October 15, 1998, Rockwell Collins, Business and Regional Systems, 400 Collins Road NE., Cedar Rapids, Iowa 52498, made application to the FAA for a Supplemental Type Certificate (STC) for the Boeing Model 737–300/–400/–500 series airplanes. These airplanes are low-wing, pressurized transport category airplanes with twin, wing-mounted, jet engines. They are capable of seating between 110 and 147 passengers, depending upon the model and configuration. The proposed configuration of these modified airplanes will incorporate a Multi-Mode Receiver (MMR) system manufactured by Rockwell Collins. The affected aircraft are scheduled for delivery to the first customers in mid-September 1999.

The Rockwell Collins MMR is a single integrated unit that enables approaches using instrument landing systems, microwave landing systems, and global navigation satellite system functions. These functions can be susceptible to disruption of both command and response signals as a result of electrical and magnetic interference caused by high-intensity radiated fields (HIRF) external to the airplane. This disruption of signals could result in loss of critical flight displays and annunciations, or could present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101 (''Designation of applicable regulations''), Rockwell Collins must show that the Boeing Model 737–300/–400/–500 series airplanes, as modified to include the MMR installation, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A16WE or the applicable regulations in effect on the date of

application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The specific regulations included in the certification basis for the Boeing Model 737–300/–400/–500 series airplanes include 14 CFR part 25, as amended by amendment 25–1 through 25–3, 25–7, 25–8, and 25–15.

Purpose of Special Conditions

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 737–300/–400/–500 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 (''Special conditions'').

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 737–300/–400/–500 must comply with the part 25 fuel vent and exhaust emission requirements of 14 CFR part 34, and the part 25 noise certification requirements of 14 CFR part 36.

Special conditions, as appropriate, are issued in accordance with § 11.49, as required by §§ 11.28 and 11.29, and become part of the airplane's type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Rockwell Collins apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The modified Boeing Model 737–300/–400/–500 series airplanes will incorporate the Rockwell Collins MMR system, which performs critical functions. The MMR system contains electronic equipment for which the current airworthiness standards (14 CFR part 25) do not contain adequate or appropriate safety standards that address protecting this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a ''novel or unusual design feature.''

Discussion

There is no specific regulation that addresses requirements for protection of electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Boeing Model 737–300/–400/–500 airplanes modified to include the Rockwell Collins MMR system. These special conditions will require that this system, which performs critical functions, must be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Field Strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation

Rulemaking Advisory Committee. In general, these standards are less critical than the threat level that was previously used as the basis for some earlier special conditions.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 737–300/–400/–500 series airplanes modified by Rockwell Collins to include the MMR system. Should Rockwell Collins apply at a later date for a design change approval to modify any other model that may be included on Type Certificate A16WE and incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on the Boeing 737–300/–400/–500 airplanes as modified to include the Rockwell Collins MMR system installation. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplanes.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Boeing Model 737–300/–400/–500 series airplanes as modified by Rockwell Collins to include the Rockwell Collins Multi-Mode Receiver.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operations and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on August 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22751 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–113–AD; Amendment 39–11270; AD 99–18–04]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, that requires repetitive inspections to detect cracking of the support beam of the main landing gear (MLG) fairing, and a permanent repair, if necessary. This AD also requires installation of reinforcement parts for the longitudinal beam of the MLG fairing, which terminates the requirements of this AD. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent cracking of the support beam of the MLG fairing, which could result in reduced structural integrity of the lower part of the MLG fairing, and consequent separation of part of the fairing from the airplane and possible damage to the airplane or injury to persons on the ground.

DATES: Effective October 6, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 6, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington: or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on June 9, 1998 (63 FR 31382). That action proposed to require repetitive inspections to detect cracking of the support beam of the main landing gear (MLG) fairing, and a permanent repair, if necessary. That action also proposed to require installation of reinforcement parts for the longitudinal beam of the MLG fairing, which would terminate the requirements of the AD. In addition, that action proposed to limit the applicability of the original NPRM.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Revise Compliance Time

The manufacturer provides an additional statement to comments submitted in response to the original NPRM regarding continued flight after detection of cracking. The manufacturer notes that inspections, repair, and reinforcement of the support beam of the MLG fairing are intended to prevent

the possibility of separation of part of the fairing from the aircraft and injury to persons on the ground. Since the support beam and MLG fairing are secondary structure, the manufacturer states that if cracks of less than 50 millimeters are found, allowing temporary repairs along with follow-on repetitive inspections every 300 flight hours, as recommended in Dornier Alert Service Bulletin ASB–328–53–010, dated October 13, 1995, does not impair safe operation.

From this comment, the FAA infers that the manufacturer is again requesting that the FAA reconsider the requirement to accomplish a permanent repair prior to further flight if any crack is found during inspection, as specified in paragraph (a)(2) of the proposed AD. The FAA acknowledges that the structure for which repairs may be necessary is considered to be secondary structure, and that an acceptable temporary repair is available. After further consideration, the FAA partially concurs with the request.

The FAA does not concur with all procedures recommended in the alert service bulletin for continued flight following detection of cracking. Specifically, the FAA does not concur that inspections may be allowed to continue indefinitely until crack length exceeds 50 millimeters. The FAA has determined that although continued flight can be allowed under restricted conditions following accomplishment of a temporary repair, the permanent repair must be accomplished within a period of 6 months. Additionally, the FAA does not concur that repeated stop drilling of the crack should be performed as a continuing temporary repair where further cracking is detected. The FAA has determined that, if any subsequent inspection reveals crack growth beyond the stop drilled area, the permanent repair should be accomplished prior to further flight.

However, since the manufacturer has outlined circumstances of unusual need, the FAA concurs that the airplane can be operated safely with a known crack of less than 50 millimeters for a limited period of time under certain conditions. These conditions include accomplishment of a one-time temporary repair prior to further flight after cracking is detected; reinspection at intervals not to exceed 300 flight hours until the permanent repair is accomplished; accomplishment of the permanent repair within 6 months after cracking is detected; and, immediate accomplishment of the permanent repair if cracking beyond the stop drilling is found in subsequent inspections. Paragraph (a) of the final rule has been revised to specify these requirements following detection of cracks.

Request To Revise Applicability

The manufacturer requests that the applicability statement of the proposed AD be revised to include only airplanes on which the procedures specified in Dornier Service Bulletin SB–328–53–184, Revision 1, dated July 2, 1997 (which is referenced in the proposed AD as the appropriate source of service information for accomplishment of terminating action) have not been accomplished. The manufacturer states that some operators have already incorporated the subject service bulletin, and provides an updated list of airplane serial numbers on which the service bulletin has not yet been accomplished.

The FAA concurs with the manufacturers request to limit the applicability to airplanes on which the terminating action described in Service Bulletin SB–328–53–184 has not been accomplished. However, since operators may be accomplishing such action on an ongoing basis, revising airplane serial numbers in the applicability of this AD would not provide an accurate effectivity in the future. Therefore, the FAA has limited the applicability of the final rule to those airplanes on which Dornier Service Bulletin SB–328–53–184, Revision 1, dated July 2, 1997, has not been accomplished.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 47 Dornier Model 328–100 series airplanes of U.S. registry will be affected by this AD.

It will take approximately I work hour per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $2,820, or $60 per airplane, per inspection cycle.

It will take approximately 8 work hours per airplane to accomplish the required installation of reinforcement parts, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the installation required by this AD on U.S. operators is estimated to be $22,560, or $480 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator be required to accomplish the permanent repair of cracked structure, it would take approximately 3 work hours per airplane to accomplish it, at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the repair action, if accomplished, is estimated to be $180 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–18–04 Dornier Luftfahrt GMBH: Amendment 39–11270. Docket 96–NM–113–AD.

Applicability: Model 328–100 series airplanes, serial numbers 3005, 3008, 3009, and 3011 through 3079 inclusive; except airplanes on which Dornier Service Bulletin SB–328–53–184, Revision 1, dated July 2, 1997, has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the lower part of the main landing gear (MLG) fairing, and consequent separation of part of the fairing from the airplane and possible damgae to the airplane or injury to persons on the ground, accomplish the following:

Inspections and Repairs

(a) Within 300 hours time-in-service after the effective date of this AD, perform a visual inspection to detect cracking of the lower attachment flanges in the area of the bend radii of the forward and aft support beams of the MLG, in accordance with Dornier Alert Service Bulletin ASB–328–53–010, dated October 13, 1995.

(1) If no cracking is found, repeat the inspection thereafter at intervals not to exceed 300 hours time-in-service, until the actions required by either paragraph (a)(2)(iii) or (b) of this AD have been accomplished.

(2) If any cracking is found and the crack is less than 50 millimeters (1.97 inches) in length, accomplish paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of this AD.

(i) Prior to further flight, accomplish stop drilling as a one-time temporary repair in accordance with the alert service bulletin.

(ii) Repeat the inspection thereafter at intervals not to exceed 300 hours time-in-service until accomplishment of paragraph (a)(2)(iii) of this AD. If any inspection reveals that the cracking has grown beyond the stop drilled area, prior to further flight, accomplish paragraph (a)(2)(iii) of this AD.

(iii) Within 6 months after the cracking is detected, accomplish the permanent repair in accordance with the alert service bulletin. Accomplishment of the permanent repair constitutes terminating action for the repetitive inspections required by this AD.

(3) If any crack is found and the crack is greater than or equal to 50 millimeters (1.97 inches) in length, prior to further flight, accomplish the permanent repair in accordance with the alert service bulletin. Accomplishment of the permanent repair constitutes terminating action for the repetitive inspections by this AD.

Terminating Modification

(b) Within 3,000 hours time-in-service after the effective date of this AD, install reinforcement parts for the longitudinal beam of the MLG, in accordance wtih Dornier Service Bulletin SB–328–53–184, Revision 1, dated July 2, 1997. Accomplishment of this installation constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note: 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Dornier Alert Service Bulletin ASB–328–53–010, dated October 13, 1995; and Dornier Service Bulletin SB–328–53–184, Revision 1, dated July 2, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German airworthiness directives 95–413, dated November 2, 1995, and 97–073, dated March 27, 1997.

(f) This amendment becomes effective on October 6, 1999.

Issued in Renton, Washington, on August 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22390 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–111–AD; Amendment 39–11282; AD 99–18–16]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, 757–200, 767–200, and 767–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400, 757–200, 767–200, and 767–300 series airplanes. This action requires repetitive checks to detect certain failures in the warning electronic unit (WEU) or modular avionic warning electronic assembly (MAWEA); repetitive tests to detect any failure of tactile, visual, or aural alert generated by the WEU or MAWEA; and corrective action, if necessary. This AD also provides for an optional terminating action for the repetitive checks and tests. This amendment is prompted by a report of a MAWEA power supply failure due to inadequate over-voltage protection. The actions specified in this AD are intended to detect and correct such a failure, which could result in loss of visual, aural, and tactile alerts to the flightcrew. Absence of such alerts could result in the flightcrew being unaware that an immediate or appropriate action should be taken in the event of an unsafe condition.

DATES: Effective September 16, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 16, 1999.

Comments for inclusion in the Rules Docket must be received on or before November 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–

111–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sheila I. Mariano, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2675; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report that, during a production flight test of a Boeing Model 747–400 series airplane, the flight test group noticed a power supply failure on the status page of the engine indication and crew alerting system (EICAS). Investigation revealed that the automated bench test procedure for the modular avionic warning electronic assembly (MAWEA) overstressed the 5.7 volt over-voltage clamp circuit which resulted in the failure of the circuit to protect the warning cards in the MAWEA. A slow failure of the MAWEA power supply could result in the gradual degradation of available visual, aural, and tactile alerts. Absence of such alerts could result in the flightcrew not being aware and not taking immediate or appropriate action in the event of an unsafe condition (i.e., a fire, overspeed condition, autopilot disconnect, stall, not in takeoff configuration, or landing gear not extended).

The warning electronic unit (WEU) power supply units on certain Boeing 757–200, 767–200, and 767–300 series airplanes are identical to those on the MAWEA power supply on the affected Boeing Model 747–400 series airplanes. Therefore, all of these airplanes may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletins 747–31–2288, dated December 17, 1998, and Revision 1, dated January 28, 1999 (for Model 747–400 series airplanes); 757–31–0066, Revision 1, dated December 17, 1998 (for Model 757–200 series airplanes); and 767–31–0106, Revision 1, dated December 17, 1998 (for Model 767–200 and 767–300 series airplanes). These service bulletins describe procedures for replacement (including system functional tests) of the MAWEA or WEU power supply with a new power supply.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 747–400, 757–200, 767–200, and 767–300 series airplanes of the same type design, this AD is being issued to detect and correct failure of the MAWEA or WEU, which could result in loss of any visual, aural, or tactile alert to the flightcrew when an unsafe condition exists. This AD requires repetitive checks of the status page on the EICAS display system for any MAWEA or WEU failure; repetitive system functional tests to detect the loss of any visual, aural, or tactile alert; and replacement of the MAWEA or WEU power supply with a new power supply, if necessary. This AD also provides for an optional terminating action for the repetitive checks and functional tests. The replacement, if accomplished, shall be accomplished in accordance with the service bulletins described previously.

Interim Action

This is considered to be interim action. The FAA may consider further rulemaking action to require the accomplishment of the optional terminating action currently specified in this AD. However, the proposed compliance time for accomplishment of that action is sufficiently long so that prior notice and time for public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–111–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–18–16 Boeing: Amendment 39–11282. Docket 99–NM–111–AD.

Applicability: Model 747–400 series airplanes, line numbers 1121 through 1177 inclusive; Model 757–200 series airplanes, line numbers 761 through 828 inclusive; and Model 767–200 and 767–3300 series airplanes, line numbers 668 through 723 inclusive; equipped with either a modular avionics warning electronic assembly (MAWEA) or a warning electronics unit (WEU) power supply, part number 285T0035–201; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct failure of the MAWEA or WEU, which could result in a gradual degradation and eventual loss of visual, aural, or tactile alerts to the flightcrew, accomplish the following:

Model 747–400 Series Airplanes: Checks and Functional Tests

(a) For Model 747–400 series airplanes: Within 15 days after the effective date of this AD, check the status page of the engine indication and crew alerting system (EICAS) for any MAWEA failure; and perform the system functional tests required by paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (a)(5) of this AD to detect loss of any visual, aural, or tactile alert. Thereafter, repeat the EICAS status page check and the system functional tests before each flight.

Note 2: The following tests are an abbreviated version of Section 3, Work Instructions, of Boeing Service Bulletin 747–31–2288, dated December 17, 1998, and Revision 1, dated January 28, 1999.

(1) Perform a takeoff (T/O) configuration warning test to check the T/O configuration warning card, master monitors A and B, and left and right aural synthesizer cards.

(i) Set the parking brake.

(ii) Initiate the following central maintenance computer (CMC) ground test—31 indication/recording: T/O warning.

(iii) Verify that the left and right master warning lights (MWL) illuminate and the siren is heard from both the left and right speakers.

(2) Perform an altitude alert test to check the crew alert module.

(i) Verify the parking brake is still set.

(ii) Set the selected altitude on the mode control panel (MCP) to approximately 400 feet above the current altitude.

(iii) Verify that the box around the current altitude on the altitude tape becomes bright white.

(iv) Set the selected altitude on the MCP to 10,000 feet.

(v) Verify the aural warning owl is not activated.

(3) Perform a stall warning test to check the left and right stall management module cards.

(i) Ensure that the air data computers (ADC) are operational.

(ii) Initiate the following CMC ground test—27 stall warning: Left.

(iii) Verify that both stick shakers activate.

(iv) Initiate the following CMC ground test—27 stall warning: Right.

(v) Verify that both stick shakers activate.

(4) Perform an autopilot (A/P) disconnect test to check the left and right clacker wailer card.

(i) Press and hold the A/P disconnect on either control wheel.

(ii) Verify the wailer aural is heard over the left and right speakers and MWL's.

(iii) Release the A/P disconnect switch.

(5) Perform a MAWEA card light emitting diode (LED) test per Airplane Maintenance Manual (AMM) task 31–51–00–715–014, ''MAWEA operational test,'' to verify that no red LED on the MAWEA circuit cards illuminate.

Note 3: The EICAS status page check and the system functional tests are considered maintenance functions that require airplane log book entree and maintenance release prior to flight.

Model 757–200, 767–200, and 767–300 Series Airplanes: Checks and Functional Tests

(b) For Model 757–200, 767–200, and 767–300 series airplanes: Within 15 days after the effective date of this AD, check the status page of the EICAS for any WEU failure; and perform the Work Instructions in Section 3, Part 1, of Boeing Service Bulletin 757–31–0066, Revision 1, dated December 17, 1998 (for Model 757–200 series airplanes); or Boeing Service Bulletin 767–31–0106, Revision 1, dated December 17, 1998 (for Model 767–200 and 767–300 series airplanes); as applicable; to detect loss of any visual, aural, or tactile alert. Thereafter, repeat the EICAS status page check and the Work Instructions in Section 3, Part 1 of the applicable service bulletin before each flight.

Note 4: The EICAS status page check and performance of the Work Instructions in Section 3, Part 1, of the applicable service bulletin are considered maintenance functions that require airplane log book entree and maintenance release prior to flight.

Corrective Action

(c) If any failure of the MAWEA or WEU, as applicable, or the loss of any visual, aural, or tactile alert is detected during any test required by either paragraph (a) or (b) of this AD, prior to further flight, replace the power supply of the MAWEA or WEU with a new power supply, P/N 285T0035–202 Mod A, in accordance with either Boeing Service Bulletin 747–31–2288, dated December 17, 1998, or Revision 1, dated January 28, 1999 (for Model 747–400 series airplanes); 757–31–0066, Revision 1, dated December 17, 1998 (for Model 757–200 series airplanes); or 767–31–0106, Revision 1, dated December 17, 1998 (for Model 767–200 and 767–300 series airplanes); as applicable. Accomplishment of this action constitutes terminating action for the repetitive inspection requirements of this AD.

Note 5: Page 59 of Boeing Service Bulletin 747–31–2288, Revision 1, dated January 28, 1999, incorrectly references the Boeing 767 AMM as the appropriate source of service information for accomplishment of the removal and installation of the power supply. However, the correct reference is the Boeing 747 AMM.

Spares

(d) As of the effective date of this AD, no person shall install a MAWEA or WEU power supply, part number 285T0035–201, on any airplane.

Optional Terminating Action

(e) Replacement of the power supply of the MAWEA or WEU with a new power supply, P/N 285T0035–202 Mod A, in accordance with Boeing Service Bulletin 747–31–2288, dated December 17, 1998, or Revision 1, dated January 28, 1999 (for Model 747–400 series airplanes); 757–31–0066, Revision 1, dated December 17, 1998 (for Model 757–200 series airplanes); or 767–31–0106, Revision 1, dated December 17, 1998 (for Model 767–200 and 767–300 series airplanes); as applicable; constitutes terminating action for the repetitive system functional tests and EICAS status page checks required by this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) The replacement, if accomplished, shall be done in accordance with Boeing Service Bulletin 747–31–2288, dated December 17, 1998, or Boeing Service Bulletin 747–31–2288, Revision 1, dated January 28, 1999; Boeing Service Bulletin 757–31–0066, Revision 1, dated December 17, 1998; or Boeing Service Bulletin 767–31–0106, Revision 1, dated December 17, 1998; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on September 16, 1999.

Issued in Renton, Washington, on August 24, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22532 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–187–AD; Amendment 39–11283; AD 99–18–17]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series

Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. This action requires repetitive replacements of the airplane battery with a new or reconditioned battery, and for certain airplanes, replacement of the battery charger with a new or serviceable battery charger. This action also requires performing repetitive tests to determine the condition of a certain diode of the Generator Control Units (GCU); and corrective actions, if necessary. This amendment is prompted by an incident during which all electrical power was lost due to a combination of a weak or depleted battery and the failure of a certain diode of the GCU. The actions specified in this AD are intended to prevent failure of all electrically powered airplane systems, which could result in the inability to continue safe flight and landing.

DATES: Effective September 16, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 16, 1999.

Comments for inclusion in the Rules Docket must be received on or before November 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–187–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen S. Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report of an incident during which all electrical power was lost due to a combination of a weak or depleted battery and the failure of a certain diode of the GCU on a Boeing Model 737–200 series airplane. The electrical configuration of a Boeing Model 737–200 series airplane is similar in design to that of Boeing Model 737–100, –300, –400, and –500 series airplanes. Therefore, Boeing Model 737–100, –300, –400, and –500 series airplanes maybe subject to the same unsafe condition revealed on the Model 737–200 series airplane. The report revealed that, during an approach for landing, all electrical power was lost while the flight crew attempted a routine, in-flight start of the Auxiliary Power Unit (APU).

Following from that incident, an assessment of airplane battery maintenance was conducted, which resulted in the determination that some operators have extended the maintenance intervals beyond those recommended by the manufacturer. Such extended maintenance intervals increase the likelihood of allowing an airplane to operate with a weak or depleted airplane battery. The risk of a weak or depleted battery is greater on Model 737–100 and –200 series airplanes than the Model 737–300, –400 and –500 series airplanes because some of these airplanes utilize an older version of a battery charger. This older version of a battery charger has charging characteristics (overcharges and dries out the battery) that are not compatible with the extended airplane battery maintenance intervals. Additionally, certain diodes of the GCU have exhibited a susceptibility to short-circuit failure. The cause of these failures is under investigation.

If an attempt is made to start the APU during flight with a weak or depleted battery, and a short-circuit failure of a certain diode of the GCU has occurred, all electrical power could be lost for all airplane systems. Such failure could result in the inability to continue safe flight and landing.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Telex Message M–7200–99–01528, dated March 5, 1999, which describes procedures for performing repetitive tests to determine the condition of a certain diode of the GCU; and corrective actions, if necessary. The corrective actions include replacement of any GCU with a new or serviceable GCU if a failed diode is detected, and for certain conditions, replacement of the airplane battery with a new or reconditioned airplane battery.

The FAA also has reviewed and approved Boeing 737 Airplane Maintenance Manual (AMM) Chapters 20–10–111 and 24–31–11. These service documents describe the following:

- AMM 20–10–111: For Model 737–100 and –200 series airplanes, this AMM describes procedures for removal and installation of black box units. For these airplane models, the airplane battery charger is considered to be a black box unit.
- AMM 24–31–11: For all Model 737–100, –200, –300, –400, and –500 series airplanes this AMM describes procedures for removal and installation of the airplane battery with a new or reconditioned airplane battery. Additionally, the AMM describes

procedures for cleaning and checking any installed airplane battery.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent failure of all electrically powered airplane systems, which could result in the inability to continue safe flight and landing. This AD requires accomplishment of the actions specified in the service documents described previously. This AD also requires that operators report results of inspection findings to the FAA.

Interim Action

Since the cause of the failures of the GCU's is under investigation, this is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–187–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–18–17 Boeing: Amendment 39–11283. Docket 99–NM–187–AD.

Applicability: All Model 737–100, –200, –300, –400, and –500 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of all electrically powered airplane systems, which could result in the inability to continue safe flight and landing, accomplish the following:

(a) For Model 737–100 and –200 series airplanes equipped with battery charger Boeing part number (P/N) 10–60701–1: Within 90 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Replace the airplane battery charger with a new or serviceable airplane battery charger, Boeing P/N 10–60701–3, in accordance with Chapter 20–10–111 of the Boeing 737 Airplane Maintenance Manual (AMM); and

(2) Replace the airplane battery with a new or reconditioned airplane battery in accordance with Chapter 24–31–11 of the Boeing 737 AMM. Thereafter, replace the airplane battery with a new or reconditioned airplane battery at intervals not to exceed 750 flight hours.

(b) For Model 737–300, -400, and -500 series airplanes: Within 90 days after the effective date of this AD, replace the airplane battery with a new or reconditioned airplane battery in accordance with Chapter 24–31–11 of the Boeing 737 AMM. Thereafter, replace the airplane battery with a new or reconditioned airplane battery at intervals not to exceed 750 flight hours.

(c) For all airplanes: Within 90 days after the effective date of this AD, perform a test to determine the condition of diode CR910 of the Generator Control Units (GCU) in accordance with Boeing Telex Message M–7200–99–01528, dated March 5, 1999.

Note 2: Any tests performed prior to the effective date of this AD, in accordance with Boeing Telex Message M–7200–99–01528, dated February 19, 1999, or dated March 4, 1999, are not considered acceptable for compliance with the applicable action specified by this AD.

(1) If all diodes pass the test, repeat the diode test thereafter, at intervals not to exceed 600 flight hours.

(2) If any diode fails the test: Prior to further flight, replace the GCU with a new or serviceable GCU, and if necessary, the airplane battery with new or reconditioned airplane battery, and repeat the diode test for the replaced GCU in accordance with the telex message until successful completion of the test is achieved. Repeat the diode test thereafter, at intervals not to exceed 600 flight hours.

(d) As of the effective date of this AD, no person shall install a battery charger having P/N 10–60701–1 on any Model 737 series airplane.

(e) Within 10 days after accomplishing the initial diode test required by paragraph (c) of this AD, submit a report of the test results (negative findings) to the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as provided by paragraphs (a) and (b) of this AD, the test shall be done in accordance with Boeing Telex Message M–7200–99–01528, dated March 5, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on September 16, 1999.

Issued in Renton, Washington, on August 24, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22531 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–55–AD; Amendment 39–11280; AD 99–18–14]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Model 172R Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Cessna Aircraft Company (Cessna) Model 172R airplanes equipped with a certain modification kit that reduces friction in the elevator control system. This AD requires inspecting the control yoke pivot bolt to assure positive clearance between the pivot bolt's threaded end and aileron direct cable. If positive clearance is not found, this AD requires replacing the control yoke pivot bolt, inspecting the adjacent aileron control cables for damage, and replacing any damaged aileron control cable. This AD is the result of the manufacturer supplying incorrect length control yoke pivot bolts in Cessna Modification Kits MK 172–27–01 that were shipped from September 21, 1998, through April 18, 1999. The actions specified by this AD are intended to prevent failure of an aileron control cable because of an incorrect length control yoke pivot bolt rubbing on one of these cables, which could result in loss of aileron control with loss of directional control of the airplane.

DATES: Effective September 27, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of September 27, 1999.

Comments for inclusion in the Rules Docket must be received on or before October 27, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–55–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from the Cessna Aircraft Company, Product Support, P. O. Box 7706, Wichita, Kansas 67277; telephone: (316) 571–5800; facsimile: (316) 942–9008. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–55–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Paul C. DeVore, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Rm. 100, Mid-Continent Airport, Wichita, Kansas, 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

Cessna has informed the FAA that incorrect length control yoke pivot bolts may have been shipped in Modification Kit MK 172–27–01 to certain owners/operators of Cessna Model 172R airplanes from September 21, 1998, through April 18, 1999. This kit was issued to reduce friction in the elevator control system.

The incorrect length bolts are longer than design specifications call for and could come in contact with or rub on one of the adjacent aileron control cables. This condition, if not detected and corrected in a timely manner, could result in loss of aileron control with loss of directional control of the airplane.

Relevant Service Information

Cessna has issued Service Bulletin SB99–27–01, dated July 12, 1999, which specifies procedures for:

—Inspecting the control yoke pivot bolt to assure positive clearance between the pivot bolt's threaded end and aileron direct cable; and

—If positive clearance is not found, replacing the control yoke pivot bolt, inspecting the adjacent aileron control cables for damage, and replacing any damaged aileron control cable.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, the FAA has determined that AD action should be taken to

prevent failure of an aileron control cable because of an incorrect length control yoke pivot bolt rubbing on one of these cables, which could result in loss of aileron control with loss of directional control of the airplane.

Explanation of the Provisions of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other Cessna Model 172R airplanes of the same type design that are equipped with a Cessna Modification Kit MK 172–27–01 that was shipped sometime between September 21, 1998, and April 18, 1999, the FAA is taking AD action. This AD requires inspecting the control yoke pivot bolt to assure positive clearance between the pivot bolt's threaded end and aileron direct cable. If positive clearance is not found, this AD requires replacing the control yoke pivot bolt, inspecting the adjacent aileron control cables for damage, and replacing any damaged aileron control cable.

Accomplishment of these actions is required in accordance with Cessna Service Bulletin SB99–27–01, dated July 12, 1999.

Determination of the Effective Date of the AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–CE–55–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–18–14 CESSNA AIRCRAFT COMPANY: Amendment 39–11280; Docket No. 99–CE–55–AD.

Applicability: The following serial numbers of Model 172R airplanes, certificated in any category; that are equipped with a Cessna Modification Kit MK 172–27–01 that was shipped sometime between September 21, 1998, and April 18, 1999:

Serial Numbers

17280003 through 17280016, 17280018 through 17280060, 17280062, 17280063, 17280065 through 17280071, 17280073 through 17280083, 17280085 through 17280088, 17280090, 17280091, and 17280093 through 17280096

Note 1: Modification Kit MK172–27–01 was issued to reduce friction in the elevator control system.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of an aileron control cable because of an incorrect length control yoke pivot bolt rubbing on one of these cables, which could result in loss of aileron control with loss of directional control of the airplane, accomplish the following:

(a) Within the next 25 hours time-in-service (TIS) after the effective date of this AD, inspect the control yoke pivot bolt to assure positive clearance between the pivot bolt's threaded end and the aileron direct cable. Accomplish this inspection in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Cessna Service Bulletin SB99–27–01, dated July 12, 1999. If positive clearance is not found, prior to further flight, accomplish the following in accordance with the service bulletin:

(1) Replace the control yoke pivot bolt; and

(2) Inspect the adjacent aileron control cables for damage and replace any damaged aileron control cable.

Note 3: This AD allows the aircraft owner or pilot to check the maintenance records to determine whether a Cessna Modification Kit MK 172–27–01 was incorporated after September 21, 1998, and before the effective date of this AD. Those kits shipped between

September 21, 1998, and April 18, 1999, could contain incorrect length control yoke pivot bolts and, when installed, could rub on one of the adjacent aileron control cables. See paragraph (c) of this AD for authorization.

(b) As of the effective date of this AD, no person may incorporate on any airplane, a Cessna Modification Kit MK 172–27–01 that was shipped sometime between September 21, 1998, and April 18, 1999, unless a replacement control yoke pivot bolt is obtained from the manufacturer, and incorporated with the modification kit.

(c) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the maintenance records to determine whether a Cessna Modification Kit MK 172–27–01 was incorporated after September 21, 1998, and before the effective date of this AD. Those kits shipped between September 21, 1998, and April 18, 1999, could contain incorrect length control yoke pivot bolts and, when installed, could rub on one of the adjacent aileron control cables. If, by checking the maintenance records, it can be positively determined that one of these suspect kits is not incorporated on the airplane, the requirements of paragraph (a) of this AD do not apply and the owner/operator must make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Rm 100, Mid-Continent Airport, Wichita, Kansas, 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(f) The inspections and replacements required by this AD shall be done in accordance with Cessna Service Bulletin SB99–27–01, dated July 12, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Cessna Aircraft Company, Product Support, P. O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on September 27, 1999.

Issued in Kansas City, Missouri, on August 23, 1999.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22536 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–12–AD; Amendment 39–11277; AD 99–18–11]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–SHERPA, SD3–60 SHERPA, SD3–30, and SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Short Brothers Model SD3–SHERPA, SD3–60 SHERPA, SD3–30, and SD3–60 series airplanes, that requires replacement of the existing bolts that secure the elevator control torque tube bearing housing retaining plate with hex head bolts. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent reduced movement of the elevator controls and consequent reduced controllability of the airplane, as a result of bolts coming loose on the elevator control torque tube bearing housing retaining plate.

DATES: Effective October 6, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 6, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–SHERPA, SD3–60 SHERPA, SD3–30, and SD3–60 series airplanes was published in the **Federal Register** on June 28, 1999 (64 FR 34581). That action proposed to require replacement of the existing bolts that secure the elevator control torque tube bearing housing retaining plate with hex head bolts.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 46 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will come from the operator's existing supply. Based on these figures, the cost impact of the required AD on U.S. operators is estimated to be $11,040, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a

''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–18–11 Short Brothers PLC: Amendment 39–11277. Docket 99–NM–12–AD.

Applicability: All Model SD3–SHERPA, SD3–60 SHERPA, SD3–30, and SD3–60 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced movement of the elevator controls and consequent reduced controllability of the airplane, as a result of bolts coming loose on the elevator control torque tube bearing housing retaining plate, accomplish the following:

Replacement

(a) Within 6 months after the effective date of this AD, replace the existing bolts of the elevator control torque tube bearing housing retaining plate with hex head bolts torqued to a value of 35 lb-ins, in accordance with Shorts Service Bulletins SD3 Sherpa–27–3, Revision 1, dated November 23, 1998 (for Model SD3–SHERPA series airplanes); SD3–60 Sherpa–27–3, Revision 1, dated November 23, 1998 (for Model SD3–60 SHERPA series airplanes); SD330–27–37, Revision 1, dated November 23, 1998 (for Model SD3–30 series airplanes); or SD360–27–28, Revision 1, dated November 23, 1998 (for Model SD3–60 series airplanes); as applicable.

Alternative Method of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The replacement shall be done in accordance with the following Shorts Service Bulletins, which contain the specified effective pages:

Service bulletin referenced and date	Page/Number	Revision level shown on page	Date shown on page
SD3 SHERPA–27–3, Revision 1, November 23, 1998	1	1	Nov. 23, 1998
	2–5	Original	Nov. 16, 1998.
SD3 SHERPA–27–3, Revision 1, November 23, 1998	1	1	Nov. 23, 1998
	2–5	Original	Nov. 16, 1998.
SD330–27–37, Revision 1, November 23, 1998	1	1	Nov. 23, 1998
	2–5	Original	Nov. 16, 1998.
SD360–27–28, Revision 1, November 23, 1998	1	1	Nov. 23, 1998
	2–5	Original	Nov. 16, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directives 009–11–98, 010–11–98, 013–11–98, and 017–11–98.

(e) This amendment becomes effective on October 6, 1999.

Issued in Renton, Washington, on August 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22533 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–43–AD; Amendment 39–11284; AD 99–18–18]

RIN 2120–AA64

Airworthiness Directives; Dowty Aerospace Propellers Model R381/6–123–F/5 Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Dowty Aerospace Propellers Model R381/6–123–F/5 propellers. This action requires initial and repetitive visual and ultrasonic (UT) inspections of propeller blades for cracks across the camber face, and, if blades are found cracked, replacement with serviceable blades. This amendment is prompted by reports of a cracked composite propeller blade. The actions specified in this AD are intended to prevent propeller blade cracks and propagation, which could result in propeller blade separation and possible aircraft loss of control.

DATES: Effective September 16, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 16, 1999.

Comments for inclusion in the Rules Docket must be received on or before November 1, 1999.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–43–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Dowty Aerospace Propellers, Anson Business Park, Cheltenham Road East, Gloucester GL29QN, England; telephone +44 1452 716000, fax +44 1452 716001. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7158, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Dowty Aerospace Propellers Model R381/6–123–F/5 propellers. The CAA advises that they have received a report of a crack that had developed on a de-iced propeller blade assembly across the camber face at a blade station of approximately 13.5'' up from the base of the blade cuff. Engineering evaluation of X-ray examination and subsequent CAT scan inspections of the camber face of the spar indicated a crack had developed internally from a composite defect in the spar and had propagated outward through the blade skin. The defective blade was found visually during a pre-flight pilot walk-around inspection. The results of this pre-flight inspection resulted in removal of the propeller and replacement of the de-iced propeller blade assembly by maintenance crews. This condition, if not corrected, could result in propeller blade cracks and propagation, which could result in propeller blade separation and possible aircraft loss of control.

Service Information

Dowty Aerospace Propellers has issued Service Bulletin (SB) No. S2000–61–75, Revision 1, dated June 11, 1999, that specifies procedures for visual and ultrasonic (UT) inspections of propeller blades for cracks across the camber face, and provides reject procedures for cracked blades. The CAA classified this SB as mandatory and issued Airworthiness Directive (AD) 003–05–99 in order to assure the airworthiness of these propellers in the UK.

This propeller model is manufactured in the UK and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other propellers of the same type design registered in the United States, this AD requires initial and repetitive visual inspections for blade cracks at intervals of 50 hours time-in-service (TIS), and UT inspections at intervals of 200 hours TIS. Blades found cracked must be replaced with serviceable blades prior to further flight. The actions would be required to be accomplished in accordance with the SB described previously.

Interim Action

The manufacturer is reviewing the design of the propeller blades and changes to the manufacturing process; hence future rulemaking may be forthcoming requiring installation of improved blades or changes to the inspection procedures.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NE–43–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–18–18 Dowty Aerospace Propellers: Amendment 39–11284. Docket 99–NE–43–AD.

Applicability: Dowty Aerospace Propellers Model R381/6–123–F/5 propellers, installed on but not limited to SAAB 2000 series airplanes.

Note 1: This airworthiness directive (AD) applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent propeller blade cracks and propagation, which could result in propeller blade separation and possible aircraft loss of control, accomplish the following:

Visual Inspections

(a) Perform initial and repetitive visual inspections of propeller blades for cracks across the camber face in accordance with the Accomplishment Instructions of Dowty Aerospace Propellers Service Bulletin (SB) No. S2000–61–75, Revision 1, dated June 11, 1999, as follows:

(1) Initially inspect within 50 hours time-in-service (TIS) after the effective date of this AD.

(2) Thereafter, inspect at intervals not to exceed 50 hours TIS since last inspection.

(3) Replace cracked propeller blades prior to further flight with serviceable blades.

Ultrasonic (UT) Inspections

(b) Perform initial and repetitive UT inspections of propeller blades for cracks across the camber face in accordance with the Accomplishment Instructions of Dowty Aerospace Propellers SB No. S2000–61–75, Revision 1, dated June 11, 1999, as follows:

(1) Initially inspect within 200 hours TIS after the effective date of this AD.

(2) Thereafter, inspect at intervals not to exceed 200 hours TIS since last inspection.

(3) Replace cracked propeller blades prior to further flight with serviceable blades.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston ACO.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

(e) The actions required by this AD shall be performed in accordance with Dowty Aerospace Propellers SB No. S2000–61–75, Revision 1, dated June 11, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dowty Aerospace Propellers, Anson Business Park, Cheltenham Road East, Gloucester GL29QN, England; telephone +44 1452 716000, fax +44 1452 716001. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on September 16, 1999.

Issued in Burlington, Massachusetts, on August 25, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–22563 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWA–11]

RIN 2120–AA66

Amend Title of the Vancouver, BC, Class C and D Airspace, Point Roberts, Washington (WA)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the name of the Vancouver, BC, Class C and the Abbotsford, BC, Class D, airspace by inserting a reference to Point Roberts, Washington, in their titles. The purpose of this action is to accurately identify the location of the airspace on the United States side of the United States/Canadian border.

EFFECTIVE DATES: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On August 20, 1997, the FAA issued a final rule, Airspace Docket Number 93–AWA–16, for the modification of Class D airspace south of Abbotsford, BC, on the United States side of the U.S./Canadian border, and the establishment of a Class C airspace area in the vicinity of Point Roberts, WA (62 FR 45526). The effective date of the modification of the Class D airspace was May 20, 1999, and the effective date of the establishment of the Class C airspace was June 18, 1998.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR

part 71) changes the title of the Vancouver, BC, Class C and the Abbotsford, BC, Class D by inserting a reference to Point Roberts, WA into the title. This action is being taken to more accurately identify the location of the airspace on the United States side of the U.S./Canadian border. This is an administrative change only to the title of the Class B and Class D airspace areas in Vancouver, BC, and does not involve a change in the dimensions or operating requirements of these areas, therefore, I find that notice and public procedure under 5 U.S.C 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a significant regulatory action under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR part 71 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 4000—Subpart C—Class C Airspace

* * * * *

ANM BC C Vancouver, BC [Amended]

By removing the words ''ANM BC C Vancouver, BC,'' in the title and substituting the words ''ANM BC C Vancouver, BC (Point Roberts, WA)'' in the title.

* * * * *

Paragraph 5000—Subpart D—Class D Airspace

* * * * *

ANM BC D Abbotsford, BC [Amended]

By removing the words ''ANM BC D Abbotsford, BC,'' in the title and substituting the words ''ANM BC D Abbotsford, BC (Point Roberts, WA)'' in the title.

* * * * *

Issued in Washington, DC, on August 25, 1999.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 99–22752 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–10]

Establishment of Class D Airspace; Tupelo, MS.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the geographic coordinates of a final rule that was published in the **Federal Register** of August 24, 1999, (64 FR 46114), Airspace Docket No. 99–ASO–10.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document DOCID: fr24au99–2, Airspace Docket No. 99–ASO–10, published on August 24, 1999, (64 FR46114), established Class D surface area airspace at Tupelo, MS. Errors were discovered in the geographic coordinates of the Tupelo Municipal-C.D. Lemons Airport, Tupelo, MS. This action corrects those errors.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic coordinates for the Tupelo Municipal-C.D. Lemons Airport, Tupelo, MS. for the Class D surface area airspace at Tupelo, MS, as published in the **Federal Register** on August 24, 1999, (64 FR46114), (Federal Register Document DOCID: fr24au99–2; page 46115), are corrected as follows:

§ 71.71 [Corrected]

* * * * *

ASO MS D Tupelo, MS [Corrected]

By removing ''Lat. 34°16′00″N, long. 88°46′11″W'' and substituting ''Lat. 34°16′05″N, long. 88°46′12″W''.

* * * * *

Issued in College Park, Georgia, on August 28, 1999.

Signed by:

Nancy B. Shelton,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 99–22755 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–28]

Amendment to Class E Airspace; Grain Valley, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Grain Valley, MO.

DATE: The direct final rule published at 64 FR 39009 is effective on 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 21, 1999 (64 FR 39009). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the

regulation would become effective on November 4, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on August 20, 1999.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 99–22615 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–25]

Amendment to Class E Airspace, York, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at York, NE.

DATES: This direct final rule published at 64 FR 33013 is effective on 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on June 21, 1999 (64 FR 33013). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on November 4, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on August 20, 1999.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 99–22614 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–36]

Amendment to Class E Airspace; Parsons, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Parsons, KS.

DATES: The final rule published at 64 FR 39007 is effective on 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 21, 1999 (64 FR 39007). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on November 4, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on August 20, 1999.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 99–22616 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 99–ASO–11]

RIN 2120–AA66

Amend Controlling Agency Title for Restricted Area R–7104, Vieques Island, PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action corrects the title of the controlling agency for Restricted Area R–7104 from ''FAA, San Juan ARTCC,'' to ''FAA, San Juan CERAP.'' This change is required to reflect the proper classification of the San Juan air traffic control facility.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The legal description for Restricted Area R–7104 incorrectly identifies the controlling agency as San Juan ARTCC. ''ARTCC'' applies to an FAA ''air route traffic control center'' which performs primarily en route air traffic control functions. The San Juan facility, instead, is a Combined Center/Radar Approach Control (CERAP) facility that performs the combined functions of an en route center and a terminal radar approach control. The proper title of the R–7104 controlling agency is ''San Juan CERAP.''

The Rule

This action amends 14 CFR part 73 by correcting the title of the controlling agency for Restricted Area R–7104, Vieques Island, PR, from ''FAA, San Juan ARTCC,'' to ''FAA, San Juan CERAP.'' This change is necessary to reflect the correct classification and function of that facility.

Since this administrative change will not alter the boundaries, altitudes or time of designation for Restricted Area R–7104, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Section 73.71 of part 73 was republished in FAA Order 7400.8F, dated October 27, 1998.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action is a minor administrative change to amend the name of the controlling agency of an existing restricted area. There are no changes to air traffic control procedures or routes as a result of this action. Therefore, this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, ''Policies and Procedures for Considering Environmental Impacts,'' and the National Environmental Policy Act of 1969.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.71 [Amended]

2. § 73.71 is amended as follows:

* * * * *

R–7104 Vieques Island, PR [Amended]

By removing the words ''Controlling agency. FAA, San Juan ARTCC,'' and adding the words ''Controlling agency. FAA, San Juan CERAP.''

* * * * *

Issued in Washington, DC, on August 25, 1999.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 99–22753 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 742 and 774

[Docket No. 990811214–9214–01]

RIN 0694–AB79

Exports and Reexports of Commercial Charges and Devices Containing Energetic Materials

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which identifies those items subject to the Department of Commerce export controls. This interim rule amends the CCL by revising and clarifying controls on certain commercial charges and devices containing energetic materials commonly used in mining and oil well development as well as in air bags and fire extinguishers and also certain pyrotechnic/explosive devices, of the type commonly used by the U.S. motion picture and television industry. Specifically, this rule revises Export Control Classification Numbers (ECCNs) 1C018 and 1C992 to better distinguish the types of charges and explosive devices controlled by these entries and to provide clear thresholds of control. Military explosive devices or charges that utilize United States Munitions List (USML) controlled energetic materials are subject to the export licensing authority of the Department of State. In addition, individual USML controlled energetic materials, even when compounded with other materials, are subject to the export licensing authority of the Department of State, when not incorporated into explosive devices or charges controlled by ECCNs 1C018 or 1C992. Commercial charges and devices containing energetic materials that are not subject to the export licensing authority of the Department of State or are not controlled by ECCN 1C018 are controlled by ECCN 1C992 for anti-terrorism reasons.

This rule removes ECCN 1C998. Items previously controlled by ECCN 1C998 have been moved to ECCN 1C992.

In addition, this rule corrects an inadvertent error to License Exception LVS for ECCN 0A018 that was published on July 14, 1998 (63 FR 37767).

DATES: Effective Date: This rule is effective September 1, 1999.

COMMENT DATES: Comments on this rule must be received on or before October 18, 1999.

ADDRESSES: Written comments on this rule should be sent to Hillary Hess, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Tanya Mottley, Director, Strategic Trade Division, Bureau of Export Administration, Telephone: (202) 482–1837.

SUPPLEMENTARY INFORMATION:

Background

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, the Export Administration Regulations and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), and August 10, 1999 (64 FR 44101, August 13, 1999.

Rulemaking Requirements

1. This interim rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves a collection of information approved by the Office of Management and Budget under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 45 minutes manually per submission and 40 minutes electronically, per submission. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Regulatory Policy Division, Bureau of Export Administration, Department of

Commerce, P.O. Box 273, Washington, DC 20044 .

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is being issued in interim form and BXA will consider comments in the development of the final regulations.

Accordingly, the Department encourages interested persons who wish to comment to do it at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close October 18, 1999. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 6883, Department of Commerce, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Henry Gaston, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482–0500.

List of Subjects

15 CFR Part 742

Exports, Foreign trade.

15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 742 and 774 of the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

1. The authority citation for part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 3 CFR, 1996 Comp., p. 228; Notice of August 13, 1997 (62 FR 43629, August 15, 1997); Notice of August 13, 1998 (63 FR 44121, August 13, 1998); and Notice of August 10, 1999 (64 FR 44101, August 13, 1999).

2. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 720; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995, 60 FR 42767, 3 CFR, 1995 Comp., p. 501; Notice of August 14, 1996, 61 FR 42527, 3 CFR, 1996 Comp., p. 298; Notice of August 13, 1997, 62 FR 43629, 3 CFR, 1997 Comp. p. 306; Notice of August 13, 1998, 63 FR 44121, 3 CFR, 1998 Comp. p. 294; and Notice of August 10, 1999 (64 FR 44101, August 13, 1999).

PART 742—[AMENDED]

3. Section 742.9 is amended by adding a new paragraph (b)(1)(vii), to read as follows:

§ 742.9 Anti-terrorism: Syria

* * * * *

(b) * * *

(1) * * *

(vii) Commercial charges and devices controlled under ECCN 1C992.

* * * * *

4. Section 742.10 is amended by adding a new paragraph (b)(1)(vii), to read as follows:

§ 742.10 Anti-terrorism: Sudan

* * * * *

(b) * * *

(1) * * *

(vii) Commercial charges and devices controlled under ECCN 1C992.

* * * * *

PART 774—[AMENDED]

5. In Supplement No. 1 to part 774, the Commerce Control List, Category 0 (Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items]), Export Control Classification Number (ECCN) 0A018 is amended by revising the License Exceptions section to read as follows:

0A018 Items on the International Munitions List.

* * * * *

LICENSE EXCEPTIONS

LVS:
$5000 for 0A018.a and .b
$3000 for 0A018.c
$1500 for 0A018.d through .f
$0 for Rwanda and the Federal Republic of Yugoslavia (Serbia and Montenegro)
GBS: N/A
CIV: N/A

* * * * *

6. In Supplement No. 1 to part 774, the Commerce Control List, Category 1 (Materials, Chemicals, Microorganisms, and Toxins), the following Export Control Classification Numbers (ECCNs) are amended:

a. By revising the entry heading and the List of Items Controlled section ECCN 1C018;

b. By revising ECCN 1C992; and

c. By removing ECCN 1C998, to read as follows:

1C018 Commercial charges and devices containing energetic materials on the International Munitions List.

* * * * *

List of Items Controlled

Unit: Number.

Related Controls: (1) Explosive devices or charges that utilize USML controlled energetic materials (See 22 CFR 121.1, Category V) are subject to the licensing authority of the U.S. Department of State, Office of Defense Trade Controls if they have been specifically designed, developed, configured, adapted, or modified for a military application. (2) With the exception of slurries, cutters and severing tools, if the USML controlled materials utilized in devices and charges controlled by this entry can be easily extracted without destroying the device or charge, then they are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (3) Commercial prefabricated slurries and emulsions containing greater than 35% of USML controlled energetic materials are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Control. (4) The individual USML controlled energetic materials, even when compounded with other materials, remain subject to the export licensing authority of the Department of State when not incorporated into explosive devices or charges controlled by this entry or 1C992. (5) See also ECCNs 1C011, 1C111, and 1C239 for additional controlled energetic materials.

Related Definitions: (1) For purposes of this entry, the term ''controlled materials'' means controlled energetic materials (see ECCNs 1C011, 1C111, 1C239 and 22 CFR 121.1, Category V). (2) For purposes of this entry, the mass of aluminum powder, potassium perchlorate, and any of the substances listed in the note to the USML (see 22 CFR Part 121.12) (such as ammonium pictrate, black powder, etc.) contained in commercial explosive devices and in the charges are omitted when determining the total mass of controlled material.

Items:

a. Shaped charges specially designed for oil well operations, utilizing one charge functioning along a single axis, that upon detonation produce a hole; and

a.1. Contain any controlled materials;

a.2. Have a uniform shaped conical liner with an included angle of 90 degrees or less;

a.3. Have more than 0.090 kg but not more that 2.0 kg of controlled materials; and

a.4. Have a diameter not exceeding 4.5 inches.

b. Detonating cord or shock tubes containing greater than 0.064 kg per meter (300 grains per foot), but not more than 0.1 kg per meter (470 grains per foot) of controlled materials;

c. Cartridge power devices containing greater than 0.70 kg, but not more than 1.0 kg of controlled materials;

d. Detonators (electric or nonelectric) and assemblies thereof containing greater than 0.01 kg, but not more than 0.1 kg of controlled materials;

e. Igniters containing greater than 0.01 kg, but not more than 0.1 kg of controlled materials;

f. Oil well cartridges containing greater than 0.015 kg, but not more than 0.1 kg of controlled materials;

g. Commercial cast or pressed boosters containing greater than 1.0 kg, but not more than 5.0 kg of controlled materials;

h. Commercial prefabricated slurries and emulsions containing greater than 10 kg and less than or equal to thirty-five percent by weight of USML controlled materials;

i. Cutters and severing tools containing greater than 3.5 kg, but not more than 10 kg of controlled materials;

j. Pyrotechnic devices when designed exclusively for commercial purposes (e.g., theatrical stages, motion picture special effects, and fireworks displays), and containing greater than 3.0 kg, but not more than 5.0 kg of controlled materials; or

k. Other commercial explosive devices and charges, not controlled by 1C018.a through g above, when used for commercial applications and containing greater than 1.0 kg but not more than 5.0 kg of controlled materials.

1C992 Commercial charges and devices containing energetic materials, n.e.s.

License Requirements

Reason for Control: AT, UN.

Control(s)	Country chart
AT applies to entire entry .. UN applies to 1C992. b through k.	AT Column 1 Federal Republic of Yugoslavia (Serbia and Montenegro)

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value.

Related Controls: Commercial charges and devices containing USML controlled energetic materials that exceed the quantities noted or that are not covered by this entry are controlled under 1C018.

Related Definitions: (1) Items controlled by this entry 1C992 are those materials not subject to the licensing authority of the U.S. Department of State, Office of Defense Trade Controls (see 22 CFR part 121) or controlled by ECCN 1C018. (2) For purposes of this entry, the term ''controlled materials'' means controlled energetic materials (see ECCNs 1C011, 1C111, 1C239 and 22 CFR 121.1, Category V). (3) The individual USML controlled energetic materials, even when compounded with other materials, remain subject to the export licensing authority of the Department of State when not incorporated into explosive devices or charges controlled by this entry. (4) Commercial prefabricated slurries and emulsions containing greater than 35% of USML controlled energetic materials are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Control. (5) For purposes of this entry, the mass of aluminum powder, potassium perchlorate, and any of the substances listed in the note to the USML (see 22 CFR 121.12) (such as ammonium pictrate, black powder, etc.) contained in commercial explosive devices and in the charges are omitted when determining the total mass of controlled material.

Items:

a. Shaped charges specially designed for oil well operations, utilizing one charge functioning along a single axis, that upon detonation produce a hole, and

a.1. Contain any formulation of controlled materials;

a.2. Have only a uniform shaped conical liner with an included angle of 90 degrees or less;

a.3. Contain more than 0.010 kg but less than or equal to 0.090 kg of controlled materials; and

a.4. Have a diameter not exceeding 4.5 inches;

b. Shaped charges specially designed for oil well operations containing less than or equal to 0.010 kg of controlled materials;

c. Detonation cord or shock tubes containing less than or equal to 0.064 kg per meter (300 grains per foot) of controlled materials;

d. Cartridge power devices, that contain less than or equal to 0.70 kg of controlled materials in the deflagration material;

e. Detonators (electric or nonelectric) and assemblies thereof, that contain less than or equal to 0.01 kg of controlled materials;

f. Igniters, that contain less than or equal to 0.01 kg of controlled materials;

g. Oil well cartridges, that contain less than or equal to 0.015 kg of controlled energetic materials;

h. Commercial cast or pressed boosters containing less than or equal to 1.0 kg of controlled materials;

i. Commercial prefabricated slurries and emulsions containing less than or equal to 10.0 kg and less than or equal to thirty-five percent by weight of USML controlled materials;

j. Cutters and severing tools containing less than or equal to 3.5 kg of controlled materials;

k. Pyrotechnic devices when designed exclusively for commercial purposes (e.g., theatrical stages, motion picture special effects, and fireworks displays) and containing less than or equal to 3.0 kg of controlled materials; or

l. Other commercial explosive devices and charges not controlled by 1C992.a through .k containing less than or equal to 1.0 kg of controlled materials.

Note: 1C992.l includes automotive safety devices; extinguishing systems; cartridges for riveting guns; explosive charges for agricultural, oil and gas operations, sporting goods, commercial mining, or public works purposes; and delay tubes used in the assembly of commercial explosive devices.

Dated: August 27, 1999.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 99–22768 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Redelegation to Officials Within the Center for Biologics Evaluation and Research

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the statements of redelegations of authority to reflect a new redelegation that enables the Director and Deputy Directors of the Center for Biologics Evaluation and Research (CBER) to issue license suspension notifications under the authority given to the Commissioner of Food and Drugs (the Commissioner). This amendment is intended to reflect those redelegations.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT:

Anita F. Richardson, Center for Biologics Evaluation and Research (HFM–610), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20850, 301–827–6206, or

Donna G. Page, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4816.

SUPPLEMENTARY INFORMATION: FDA is amending the redelegations of authority statement in § 5.67 (21 CFR 5.67) by revising the section heading and adding an authority to certain FDA officials. In order to ensure efficient program operations, the Commissioner has further redelegated this authority to the Center Director and the Deputy Center Directors, CBER, the authority to issue license suspensions under section 351(a)(2)(A) of the Public Health Service Act (42 U.S.C. 262(a)(2)(A)), as amended. The Commissioner's authority is currently codified under 21 CFR 5.10(a)(5) and the associated regulation is currently codified under 21 CFR 60l.6. This authority may not be further redelegated at this time.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; 15 U.S.C. 1451–1461; 21 U.S.C. 41–50, 61–63, 141–149, 321–394, 467f, 679(b), 801–886, 1031–1309; 35 U.S.C. 156; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1; 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O 11921, 41 FR 24294, 3 CFR, 1997 Comp., p. 124–131; E.O. 12591, 52 FR 13414, 3 CFR, 1988 Comp., p. 220–223.

2. Section 5.67 is amended by revising the section heading and the introductory paragraph, and by adding paragraph (e) to read as follows:

§ 5.67 Issuance of notices of opportunity for a hearing on proposals for denial of approval of applications for licenses, suspension of licenses, or revocation of licenses and certain notices of revocation of licenses.

The Center Director and Deputy Center Directors, Center for Biologics Evaluation and Research are authorized to issue:

* * * * *

(e) Notice of license suspensions under § 601.6 of this chapter.

Dated: August 25, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–22676 Filed 8–31–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 99F–0994]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of phosphorothioic acid, *O*,*O*,*O*-triphenyl ester, *tert*-butyl derivatives, as extreme pressure-antiwear adjuvants for lubricants intended for incidental contact with food. This action responds to a petition filed by Ciba Specialty Chemicals Corp.

DATES: This regulation is effective September 1, 1999; submit written objections and requests for a hearing by October 1, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 27, 1999 (64 FR 22615), FDA announced that a food additive petition (FAP 9B4657) had been filed by Ciba Specialty Chemical Corp., 540 White Plains Rd., P.O. Box 2005, Tarrytown, NY 10591–9005. The petition proposed to amend the food additive regulations in § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) to provide for the safe use of phosphorothioic acid, *O*,*O*,*O*-triphenyl ester, *tert*-butyl derivatives, as extreme pressure-antiwear adjuvants for lubricants intended for incidental contact with food.

The filing notice for the petition (64 FR 22615) stated that the action resulting from the petition qualified for a categorical exclusion under 21 CFR 25.32(i). This was a misprint. The correct citation is 21 CFR 25.32(j). The agency reviewed the claim and concluded that the exclusion listed in 21 CFR 25.32(j) applies.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in § 178.3570 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this final rule under 21 CFR 25.32(j), as stated above. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before October 1, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS.

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.3570 is amended in the table in paragraph (a)(3) by alphabetically adding an entry under the headings ''Substances'' and ''Limitations'' to read as follows:

§ 178.3570 Lubricants with incidental food contact.

* * * * *

(a) * * *

(3) * * *

Substances	Limitations
* * *	* * * *
Phosphorothioic acid, *O,O,O*-triphenyl ester, *tert*-butyl derivatives (CAS Reg. No. 192268–65–8).	For use only as an extreme pressure-antiwear adjuvant at a level not to exceed 0.5 percent by weight of the lubricant.
* * *	* * * *

* * * * *

Dated: August 20, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–22679 Filed 8–31–99; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA092/098–5044; FRL–6428–8]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia; Enhanced Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are converting the conditional approval of Virginia's enhanced vehicle inspection and maintenance (I/M) program, which was granted on May 15, 1997 (62 FR 26746), to a full approval. The Virginia program was conditionally approved as a revision to its State Implementation Plan (SIP) in the rule published on May 15, 1997. The conditions for full approval were described in that rulemaking, and are also discussed in this document. We have determined that Virginia has met all of the conditions for a full approval of its enhanced I/M program, and that the Virginia program meets all the requirements of the Clean Air Act.

DATES: This rule is effective on October 18, 1999, unless EPA receives adverse written comment by October 1, 1999. If adverse comment is received, we will

publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Send written comments to: David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. You may inspect copies of the documents relevant to this action during normal business hours at the following locations: Air Protection Division, 14th floor, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219. Please contact Catherine L. Magliocchetti at (215) 814–2174 if you wish to arrange an appointment to view the docket at the Philadelphia office.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, (215) 814–2174, or by e-mail at magliocchetti.catherine@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

What action is EPA taking today?
Who is affected by this action?
Who will benefit from this action?
What were the requirements for full approval of the Virginia program?
How did Virginia fulfill these requirements for full approval?

What Action Is EPA Taking Today?

In this action, we are converting our conditional approval of Virginia's I/M program as a revision to the SIP to a full approval. We are also approving Virginia's plan for conducting vehicle emissions evaluation testing in an alternative manner to Mass Emissions Transient Testing as described and provided for by 40 CFR 51.353. And, we are also approving Virginia's short-term evaluation credit demonstration, as required by provisions of the National Highway Systems Designation Act of 1995.

Who Is Affected by This Action?

Residents of the following jurisdictions in Northern Virginia: the counties of Arlington, Fairfax, Loudoun, Prince William, and Stafford; and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. It is important to note that our action today does not impose any new requirements on Virginia residents; we are merely granting full federal approval (versus the conditional federal approval previously in place) to the Virginia law and regulations that are already in place at the state level to implement the enhanced I/M program in the Commonwealth. These laws and regulations were made part of the Virginia SIP by the final rule that was published on May 15, 1997.

Who Will Benefit From This Action?

The residents of Virginia will benefit from this program, which is designed to keep vehicles maintained and operating within pollution control standards. Since air pollution does not recognize political boundaries, neighboring states' residents will also benefit from implementation of this program, designed to prevent excessive vehicle pollution.

What Were the Requirements for Full Approval of the Virginia Program?

As specified in the rulemaking published on May 15, 1997, final approval of Virginia's plan would be granted based upon the following four requirements:

(1) Virginia complies with all the conditions of its commitment to EPA, (2) EPA's review of Virginia's program evaluation confirms that the appropriate amount of program credit was claimed by Virginia, and achieved with the interim program, (3) Final program regulations are submitted to EPA, and (4) Virginia's I/M program meets all of the requirements of EPA's I/M rule, including those deminimis deficiencies identified in the May 15, 1997 interim final rulemaking.

How Did Virginia Fulfill These Requirements for Full Approval?

On June 16, 1998, Virginia submitted its revised SIP revision to EPA, correcting the major and deminimis conditions for full approval (items 1 and 4 above), as detailed in Table 1. This submittal also contained final program regulations, which fulfilled item 3. The requirement under item 2, review and approval of Virginia's interim program credit demonstration, was fulfilled by Virginia's February 2, 1999 submittal which contained an analysis of the program credits, as demonstrated during the first 6 months of program operation.

TABLE 1: SATISFACTION OF THE CONDITIONS FOR FULL APPROVAL

Requirement for full approval	How Virginia satisfied the requirement
Major Rulemaking Conditions—as summarized from the 5–15–97 rule	
(1) Submit revised program modeling demonstrating compliance with the I/M performance standard, using actual in-use program configuration for inputs.	As part of the June 16, 1998 submittal, Virginia included revised modeling that demonstrated compliance with the enhanced I/M performance standard in all applicable jurisdictions, using appropriate program inputs.
(2) Submit the final program regulations, including a METT-based evaluation as required under 40 CFR 51.353. (NOTE: This condition was subsequently amended in a July 9, 1998 rulemaking by EPA. This revision extended the deadline for submittal of the evaluation plan to November 30, 1998, and allowed for technologies other than METT-based testing to be used in the program evaluation).	On November 30, 1998, Virginia submitted an amendment to its I/M SIP revision, consisting of a proposed plan for conducting vehicle emissions evaluation testing in an alternative manner to Mass Emissions Transient Testing as described and provided for by the revised regulation under 40 CFR 51.353. This submittal was supplemented by Virginia on February 22, 1999.
(3) Submit final regulations which require and detail approvable test procedures and equipment specifications for all of the evaporative and exhaust tests to be used in the Virginia program.	Final regulations were included in the June 16, 1998 submittal, and included test procedures and equipment specifications for all evaporative and exhaust tests to be used in the Virginia program.
Deminimis Rulemaking Conditions—as summarized from the 5–15–97 rule	
(1) Satisfy the test frequency requirements under 40 CFR 51.355(a), and describe how test frequency will be integrated into the registration denial motorist enforcement program.	As part of the June 16 submittal, Virginia adopted and submitted regulations and procedures that ensure proper enforcement system safeguards, including registration denial procedures and integrated scheduling of vehicle testing.

TABLE 1: SATISFACTION OF THE CONDITIONS FOR FULL APPROVAL—Continued

Requirement for full approval	How Virginia satisfied the requirement
(2) Account for testing exemptions in the performance standard modeling demonstration, per 40 CFR 51.356(b)(2).	As part of the June 16 submittal, Virginia adequately addressed the requirements of this section, and appropriately modeled the performance standards credits using acceptable compliance rates and vehicle exemption inputs.
(3) Satisfy the quality control requirements, per 40 CFR 51.359	As part of the June 16 submittal, Virginia submitted its procedures for quality control and recordkeeping, in accordance with this section.
(4) Amend the Virginia regulation to comply with 40 CFR 51.360(c)(1)	As part of the June 16 submittal, Virginia included its regulation and plan for allowing issuance of the program waivers to be administered by the inspector, with oversight of the process by the DEQ. Virginia's description of, and reasoning for this plan are further detailed in an April 16, 1997 letter from DEQ to EPA. Most importantly, VA commits to monitoring the waiver rate under this proposed plan, and to make changes to the waiver issuance system if the modeled waiver rate of 3% is exceeded. EPA believes this is a reasonable alternative to agency-issued waivers. Furthermore, EPA believes that in passing the NHSDA, Congress did not intend for this element of the 1992 I/M Program Requirements to pertain to decentralized programs such as the one in Virginia. Therefore, EPA will allow Virginia to implement this plan, with the noted precautionary oversight measures in place to prevent fraud and abuse of this unique waiver issuance system.
(5) Satisfy the motorist compliance enforcement program oversight requirements, per 40 CFR 51.362.	As part of the June 16 submittal, Virginia included acceptable compliance enforcement program oversight procedures and documentation.
(6) Satisfy the quality assurance oversight requirements, per 40 CFR 51.363(e).	As part of the June 16 submittal, Virginia included acceptable quality assurance oversight procedures and documentation.
(7) Satisfy the penalty schedule requirements, per 40 CFR 51.364(a) and (d).	As part of the June 16 submittal, Virginia included a procedures document which includes an acceptable penalty schedule.
(8) Satisfy the data collection and reporting requirements, per 40 CFR 51.365(a).	As part of the June 16 submittal, Virginia included the procedures and documentation that adequately address the data collection and reporting requirements of this section.
(9) Satisfy the public information requirements, per 40 CFR 51.383(a) and (b).	As part of the June 16 submittal, Virginia included a Public Information Plan that adequately addresses the requirements of this section.
(10) Satisfy the repair performance monitoring requirements, per 40 CFR 51.369.	As part of the June 16 submittal, Virginia included the regulations and documentation that adequately address this requirement.
(11) Satisfy the recall compliance requirements, per 40 CFR 51.370	As part of the June 16 submittal, Virginia committed to adopt final recall compliance requirements within 6 months of final guidance from EPA. Since EPA has not provided this guidance to the states, EPA considers Virginia to have met all obligations up to date concerning this requirement.
(12) Satisfy the on-road testing requirements, per 40 CFR 51.371	As part of the June 16 submittal, Virginia committed to obtain a contractor to perform the necessary duties for on-road testing by July 1999.
(13) Submit a list of implementation milestone deadlines	All implementation milestone deadlines have been met by Virginia, and are included as part of the June 16 submittal.

EPA Action

We are converting the conditional approval of Virginia's enhanced I/M SIP to full approval. An extensive discussion of Virginia's plan, and our rationale for its approval was provided in the previous final rule which conditionally approved the I/M SIP (*see* 62 FR 26745 and 61 FR 57343), and our Technical Support Documents dated July 19, 1998 and September 4, 1996. This action to convert our conditional approval to full approval is being published without prior proposal because we view this as a noncontroversial revision and we anticipate no adverse comment. However, in a separate document in this **Federal Register** publication, we are proposing this action, should adverse written comments be filed. This action will be effective without further notice unless we receive relevant adverse comment by October 1, 1999. Should we receive adverse comments, we will publish a withdrawal and inform the public that this action will not take effect. Anyone interested in commenting on this action should do so at this time. If no such comments are received, you are advised that this action will be effective on October 18, 1999.

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Section 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial

danger to the public health or environment; or (4) that are required by law.

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Section 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. * * *'' The opinion concludes that ''[r]egarding section 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Section 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1997 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its enhanced inspection and maintenance program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is ''economically significant,'' as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis

would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. Union Electric Co. v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this approval of Virginia's Enhanced Inspection and Maintenance Program must be filed in the United States Court of Appeals for the appropriate circuit by November 1, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 16, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

2. Section 52.2420 is amended by adding paragraphs (c)(134) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(134) Revisions to the Virginia Regulations, Establishment of the Vehicle Emissions Inspection and Maintenance Program in the Northern Virginia Area, submitted on June 16, 1998, November 30, 1998, February 2, 1999 and February 22, 1999, by the Virginia Department of Environmental Quality:

(i) Incorporation by reference.

(A) Letter of June 16, 1998 from the Virginia Department of Environmental Quality transmitting an Enhanced Vehicle Emissions Inspection Program for the Northern Virginia Area.

(B) Regulations for the Enhanced Motor Vehicle Emissions Inspection Program in the Northern Virginia Area: 9 VAC 5–91–10 *et seq.*

(C) Letter of November 30, 1998 from the Virginia Department of Environmental Quality transmitting an Alternative Program Credit Evaluation Program.

(D) Letter of February 2, 1999 from the Virginia Department of Environmental Quality, transmitting an Evaluation of Virginia's Enhanced I/M Program Credits.

(E) Letter of February 22, 1999 from the Virginia Department of Environmental Quality, supplementing the November 30, 1998 transmittal.

(ii) Additional material.

(A) Remainder of June 16, 1998 submittal,

(B) Remainder of November 30, 1998 submittal, as supplemented on February 22, 1999, and

(C) Remainder of February 2, 1999 submittal.

§ 52.2450 [Amended]

3. In section 52.2450, paragraphs (b), (c) and (d) are removed and reserved.

[FR Doc. 99–22452 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK–21–1709–a; FRL–6412–7]

Approval and Promulgation of State Implementation Plans: Alaska

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) approves various amendments to the carbon monoxide (CO) Alaska State Implementation Plan (SIP) for Alaska. These amendments to the Alaska State Air Quality Control Plan are contained in three separate submittals to EPA, dated February 6, 1997, June 1, 1998, and September 10, 1998.

The submittals include revisions to Alaska's Air Quality Control Regulations (18 AAC 50), Emissions Inspection and Maintenance (I/M) requirements for Motor Vehicles (18 AAC 52), and Fuel Requirements for Motor Vehicles (18 AAC 53).

In addition, the revisions include changing the I/M program schedule for cars subject to I/M from annual to biennial, replacing the CO contingency measures for Anchorage, updating Alaska's General and Transportation conformity programs, and streamlining several portions of the Alaska Air Quality Control Plan for more efficient reading and organization.

DATES: This direct final rule is effective on November 1, 1999 without further notice, unless EPA receives adverse comment by October 1, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform

the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to: Ms. Montel Livingston, SIP Manager, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101, and the Alaska Department of Environmental Conservation, 410 Willoughby Avenue, Suite 105, Juneau, Alaska 99801–1795.

FOR FURTHER INFORMATION CONTACT: Ms. Montel Livingston, Office of Air Quality (OAQ–107), EPA, Seattle, Washington 98101, (206) 553-0180.

I. SUPPLEMENTARY INFORMATION:

Overview

ADEC submitted three revisions to EPA over the course of two years for inclusion into its SIP. These revisions amend the I/M program in Anchorage and Fairbanks, CO contingency measures for Anchorage, various regulations, and streamline a wide variety of CO air quality plan descriptions for easier, more organized reading.

The information in this section is organized as follows:

A. What SIP amendments is EPA approving?
B. What are the significant changes to Alaska's CO air quality control plan?
C. What are the significant changes to Alaska's I/M air quality program and regulations (AAC 52)?
D. What are the overall changes to Alaska's regulations AAC 50 and 53?
E. What are the effects to Alaska's transportation conformity program?

A. What SIP Amendments Is EPA Approving?

The following table outlines the revisions EPA received and is approving in this action:

Date of submittal to EPA	Items revised
2–6–97	—Alaska State Air Quality Control Plan: Volume II, Section I. —Alaska State Inspection and Maintenance Program Manual. —Biennial Vehicle Inspection program. —Revised Rollback Calculation.
6–1–98	—Emission Inspection and Maintenance Requirements.
9–10–98	—Alaska State Air Quality Control Plan: Volume II, sections II and III. —Air Quality Control Regulations 18 AAC 50. —Fuel Requirements for Motor Vehicles: Regulations 18 AAC 53. —Anchorage Carbon Monoxide Contingency Measures. —Transportation Conformity.

B. What Are the Significant Changes to Alaska's CO Air Quality Control Plan?

• EPA approves a new CO contingency measure for Anchorage that replaces its past two CO contingency measures.

In the September 10, 1998 submittal from ADEC, ADEC requests EPA's approval of its new CO contingency measure, an enhanced technician training certification (TTC) program in Anchorage. The TTC contingency measure consists of additional local training and certification for mechanics. The TTC program includes a series of enhanced technician training modules aimed at competency areas such as electrical theory, emission control systems, electronic ignitions, fuel injection, on-board diagnostics, advanced diagnostic tools and procedures, oxygen sensors, catalytic converters, and the use of current analytical equipment.

The TTC program helps ensure that mechanics are trained to properly maintain and repair newer vehicles with advanced technology. It may also enhance efficiency, which would provide a cost benefit to consumers.

The TTC program, found in State regulation 18 AAC 52.400–410, was adopted by the State as a CO contingency measure for Anchorage upon Anchorage's reclassification to a serious CO nonattainment area. In addition, the TTC program was already approved by EPA on February 14, 1996 (61 FR 5704) as a CO contingency measure for Fairbanks, Alaska.

The TTC program also becomes the contingency measure for the vehicle miles traveled (VMT) forecasting and tracking requirement found in section 187 of the Clean Air Act Amendments of 1990.

The two replaced contingency measures for Anchorage were (1) compressed natural gas vehicles (CNG) procurement requirements for government fleets, and, (2) the expansion of the oxygenated fuels program to the Matanuska-Susitna Valley. Both of these contingency measures were impractical to initiate upon Anchorage's CO reclassification to serious.

Using the CNG procurement requirements for government fleets as a contingency measure was determined unworkable at this time. Major issues included lack of a refueling infrastructure for CNG vehicles in and around Anchorage, and there are only selected models available now which are dedicated CNG vehicles certified to ultra low emission vehicle standards. The extent of these issues were such that it would be infeasible to implement the CNG contingency measure in Anchorage and expect to gain meaningful reductions in emissions.

The second contingency measure was the expansion of the oxygenated fuels program. With the continued fleet turnover to newer, cleaner (technologically improved) cars, the information from the oxygenated fuels program in Anchorage indicates that oxyfuel expansion to the Matanuska-Susitna Valley was unlikely to provide the benefits originally projected.

Expanding the oxygenated gasoline control area to the Matanuska-Susitna Valley was inherently less cost effective than an oxyfuel requirement in Anchorage. Expanding the requirement to the valley is less effective because vehicles fueled in the valley spend less time, on average, traveling in the nonattainment area than those fueled in Anchorage itself.

Although the benefits of oxygenated gasoline were estimated on the basis of the best information available at the time, recent MOBILE model updates have suggested that oxygenated gasoline CO emission reductions may be overestimated in some cases. Extending the program to the valley is likely to

result in even smaller benefits than were originally anticipated in the plan.

EPA concurs with ADEC's request to repeal and replace the past contingency measures with the TTC program.

● *How does approval of the new contingency measure change Alaska's Air Quality Control Regulations in 18 AAC 53, Fuel Requirements for Motor Vehicles?*

Regulation 18 AAC 53.015, Expansion of Control Area (found under Chapter 53, Article I, Oxygenated Gasoline Requirements), is repealed. This regulation had served as a CO contingency measure for Anchorage and described the geographic boundaries of an expanded oxygenated fuels programs in Anchorage if implemented as a contingency measure.

● *The Rollback Modeling Calculation Used To Determine CO Emission Reductions Is Clarified*

ADEC typically uses rollback modeling to determine CO emission reductions needed to reach attainment of the CO national ambient air quality and standards (NAAQS). The rollback calculation determines a percentage reduction target by taking the ratio of the difference between the second highest CO exceedance value in the emission inventory base year and the ambient standard, and the second highest value in the base year adjusted for the ambient background concentration. ADEC clarifies in Alaska's CO SIP that the target CO level for SIP revisions is 9.0 ppm, or the CO NAAQS. Using 9 ppm as the appropriate target level gives ADEC the amount of control necessary to attain and maintain the CO NAAQS.

● *Long Term Air Quality Projections Are Updated.*

The on-road mobile source portion of Anchorage's 1990 base year CO emission inventory was updated, using MOBILE5a which was the latest emission estimation model available as of December 1, 1994. The 1993 periodic inventory was developed and adjusted for population growth factors, and for changes in the Inspection and Maintenance program. The 1995 projected year inventory was also developed and adjusted for population growth factors, and for changes in the inspection and maintenance program and oxygenated fuels program. Tables provide summaries of the 1990 base year and 1995 projected year emissions by source category. In addition, daily emissions are calculated.

Also, data was updated to include 1995 2nd highest 8-hour ambient CO concentrations recorded at Anchorage monitoring sites.

In addition, best estimates of future VMT projections in Anchorage were completed through 1995.

● *Information is Streamlined and Reorganized in Alaska's CO SIP*

The numerous non-substantive reformatting and restructuring changes streamline the Alaska SIP and make for more efficient and customer-friendly reading. They collectively, rather than individually, result in a much more significant impact on the SIP's organization.

As an example, a table was created showing the 1998 Transportation Control Strategies for Anchorage. Headings include Federal Control Strategies, State Control Strategies, and Local Primary Control Strategies. Only one footnote accompanied the table, and that was an explanation of the oxygenated fuels program. The table is easy to understand and effectively summarizes important information.

Other similar edits and revisions found in Volume II, sections II and III of the State Air Quality Control Plan removed out-of-date references, eliminated duplicity and redundancy, reflected changes to Alaska's Inspection and Maintenance program, and generally reorganized for better sequence of information and requirements, while graphing projections and trends in population and average daily traffic.

C. What Are the Significant Changes to Alaska's I/M Air Quality Program and Regulations (AAC 52)?

EPA approves all the changes to Alaska's I/M regulations submitted by the Alaska Department of Environmental Conservation (ADEC) on February 6, 1997 and June 1, 1998. The revisions include streamlining and clarifications that make requirements easier to understand. Following are some of the major changes to Alaska's I/M air quality program:

● *I/M Program Changes From Annual to Biennial*

In 1995, the Alaska State Legislature in Senate Bill 28 required that all State I/M programs implement biennial I/M testing beginning no later than January 1, 1997. In February 1997, ADEC submitted to EPA the updated State I/M regulations that reflect this change. Many States nationwide have changed their I/M programs from annual to biennial programs. This change has provided more convenience to vehicle owners (inspections are required less frequently, except when ownership of a vehicle is transferred), only negligible increases in vehicle emissions, and improved I/M program efficiency. ADEC analyzed the impact of changing the I/M program from an annual to a biennial program on motor vehicle emissions and found it would not significantly impact emission reductions. The I/M regulations also reflect a change in fees. Alaska's I/M programs in Fairbanks and Anchorage are operated by local government, Fairbanks North Star Borough and the Municipality of Anchorage, respectively, who have the authority to set their own program fees. In addition, in June 1998 the vehicle inspection schedule was changed to match the vehicle registration schedule (required by Alaska Statute 28.10.108), resulting in vehicle inspection and registration occurring on the same biennial schedule. The certificate of inspection is $18 in both Anchorage and Fairbanks. Anchorage has set a maximum of $60 and Fairbanks $35 for inspection testing.

● *Provisions for Waivers and Emissions-Related Repair Costs Changed*

The provisions for waivers granted to motorists from passing an I/M program inspection have been revised. Waivers are now valid for one inspection cycle (every two years), instead of for one year. ADEC offset the change by proposing more stringent requirements for repair cost waivers. Section 18AAC 52.065 (''Emissions-Related Repair Cost Minimum'') was updated to require motorists to meet the minimum necessary repair costs of $450 per inspection cycle before qualifying for a waiver, as opposed to spending a maximum of $450 annually. The new requirements should increase the number of repairs completed, which could benefit air quality. This change should address public concern over waivers being valid for two years (one inspection cycle).

● *New Requirements for Dealers of Used Motor Vehicles*

In accordance with Alaska statute 45.45.400 (''Prohibited transfer of used motor vehicle''), the I/M regulations contain new requirements for dealers of used motor vehicles. The requirements apply only to cars tested by a dealership and held in inventory on a used car lot, since these cars are not likely to pollute the air. In general, an I/M certificate is good for one year for cars that are inspected while in the dealer's inventory or if the dealer registers the vehicle in the buyer's name. The new requirements are outlined in the I/M regulation under 18 AAC 52.020

(''Certificate of Inspection Requirements'').

- *ADEC's Dual Authority With an Implementing Agency Clarified*

The regulations clarify ADEC's dual authority with the implementing agencies, Fairbanks North Star Borough and the Municipality of Anchorage, under the provisions for enforcement procedures. ADEC has the authority to take an enforcement action against a motorist, certified mechanic, or station with or without the participation of the implementing agency to ensure compliance with enforcement provisions (18 AAC 52.100 and AAC 52.105).

- *Notice of Violation Provisions Pertaining to Motorist Updated*

More stringent enforcement procedures for violations by motorists are outlined in 18 AAC 52.100. ''If a motorist fails to respond or provide appropriate proof of compliance with this chapter within 30 days after receiving a notice of violation,'' the implementing agency may refer the matter for prosecution under the provision of Alaska state law pertaining to Local Air Quality Control Programs (AS 46.14.400(j)) or as a Class A misdemeanor under the provision for Criminal Penalties (AS 46.03.790). The penalty for motorists who fail to respond to a notice of violation (or fail to provide appropriate proof of compliance) was changed from potential loss of vehicle registration to the possibility of prosecution under Alaska's misdemeanor statutes.

- *New Provision Allows for Visual Identification of Certificate of Inspection (''Sticker Program'')*

A new provision allows the implementing agency to require a visual identification, such as windshield sticker or license plate tab, that clearly shows compliance with inspection requirements. A sticker program (or similar program) provides easy visual verification of program compliance, which improves enforcement and provides incentive to motorists to have their cars inspected. Details of this provision are outlined in 18 AAC 52.025.

- *Update to Requirements for Grey Market Vehicles*

Grey market vehicles are manufactured for use outside of, and imported into, the United States. The revised provision for grey market vehicles (18 AAC 52.080) reduces the requirements for issuing a certificate of inspection on a grey market vehicle when it has a United States title. However, grey market vehicles are required to pass visual and functional inspections and/or tailpipe emission standards required by the I/M program manual. In addition, motorists are still required to obtain the applicable importation documents issued by EPA or the U.S. Department of Transportation.

D. What Are the Overall Changes to Alaska's Regulations AAC 50 and 53?

EPA is approving in part and taking no action on the majority of Alaska's 18 AAC 50 Air Quality Control regulations.

Approvals 18 AAC 50

EPA is approving the following provisions of 18 AAC 50 as adopted by ADEC and effective on September 4, 1998: section 700; section 705; section 710; section 715; and section 720. These regulations relate to transportation conformity.

No Action 18 AAC 50

EPA is taking no action at this time on any of the 18 AAC 50 regulations submitted on September 10, 1998, with the exception of sections 700 through 720 which are approved. The regulations that are not being acted upon relate to the permitting of new and modified stationary sources or do not relate to the purposes of the SIP under section 110 of the Act or implement other provisions of the Clean Air Act.

Approvals 18 AAC 53

EPA is approving all of section of 18 AAC 53 regulations regarding fuel requirements for motor vehicles, with the exception of section 015 which is repealed (see below). These regulations had minor, non-substantive and streamlining changes.

Repeals 18 AAC 53

Regulation 18 AAC 53.015, Expansion of Control Area (found under Chapter 53, Article I, Oxygenated Gasoline Requirements), is repealed. This regulation had served as a CO contingency measure for Anchorage and described the geographic boundaries of an expanded oxygenated fuels programs in Anchorage if implemented as a contingency measure.

E. What Are the Effects to Alaska's Transportation Conformity Program?

This action has no impact on the transportation emissions budget. However, the switch to bienniel I/M does make it somewhat more difficult to demonstrate regional conformity, since it results in small increases in future emissions projections (while the allowable emissions budgets do not increase). However, this impact has not caused a significant problem in continuing to demonstrate conformity in Anchorage and Fairbanks, largely due to the continued decline in projected emissions resulting from fleet turnover.

Updated baseline and attainment inventories are scheduled for Anchorage and Fairbanks as part of the revised air quality attainment plans that must be prepared due to the redesignation to serious CO nonattainment status. As part of this process, the biennial I/M programs will become part of both the baseline and attainment inventories (and thus emissions budgets associated with each inventory), thereby totally eliminating any impact on regional conformity determinations.

II. Summary of Action

EPA approves the following SIP regulations submitted by the State of Alaska for inclusion into its SIP. EPA also approves some deletions (listed below) from the Alaska SIP, and takes no action on part of Alaska's submittal. The revisions pertain to the State's Carbon Monoxide Air Quality Control Plan; Transportation Conformity; and portions of Alaska regulations 18 AAC 50, 52 and 53.

EPA takes no action on the entire set of 18 AAC 50 regulations with the exceptions of: section 700; section 705; section 710; section 715; and ssction 720 which are approved by EPA. These section 700 regulations were effective September 4, 1998.

The 18 AAC 52 Inspection and Maintenance Air Quality Program and Regulations that are approved by EPA are: Effective January 1, 1998, section 005; section 010; section 015; section 020; section 025; section 035; section 037; section 050; section 060, except for subsections (8)(c), (8)(d)(2) and (8)(e); section 065; section 070; section 080; section 085; section 095; section 100; section 105; section 400; section 405; section 415, except subsection (f)(1); section 420, except subsection (a)(11); section 425; section 440; section 500; section 515; section 520, except subsection (c)(9); section 525; section 527; section 530, except subsections (b)(3), (c)(4)(C) and (d)(9); section 535; section 540; section 545; section 546; section 990.

Effective January 1, 1997: section 055; 090.

Remove the following provisions of 18 AAC 52: effective January 1, 1997, section 060, subsection 8(c) and 8(e); section 520, subsection (c)(9).

Remove the following provisions of 18 AAC 52: effective January 1, 1998: section 060, subsection 8(d)(2); section

415, subsection (f)(1); section 420, subsection (a)(11); section 530, subsection (b)(3) and (d)(9).

Remove the following provisions of 18 AAC 52, effective January 4, 1995: section 530, subsection (c)(4)(c).

The 18 AAC 53 Fuel Requirements for Motor Vehicles Regulations that are approved by EPA are: Effective October 31, 1997, section 05; section 07; section 10; section 20; section 30; section 35; section 40; section 45; section 60; section 70; section 80; section 90; section 200; section 105; section 120; section 130; section 140; section 150; section 160; section 170; and section 190; and effective September 4, 1998, 18 AAC 53.990.

Remove the following provision of 18 AAC 53.015, Expansion of Control Area, effective October 31, 1997.

In addition to the above regulations, the revisions submitted by ADEC include updates, streamlining, and editing to the narrative parts of its CO plan for easier reading and understanding.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective November 1, 1999 without further notice unless the Agency receives adverse comments by October 1, 1999.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 1, 1999 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be Economically significant as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments To provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must

prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 1, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 22, 1999.

Chuck Clarke,

Regional Administrator, Region 10.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1.The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart C—Alaska

2. Section 52.70 is amended by adding paragraph (c)(29) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(29) The Environmental Protection Agency (EPA) approves various amendments to the Alaska State Air Quality Control Plan which are contained in three separate submittals to EPA, dated February 6, 1997, June 1, 1998, and September 10, 1998, and which include the inspection and maintenance program.

(i) Incorporation by reference.

(A) Air Quality Control Regulations, 18 AAC 50. Effective September 4, 1998: Section 700; Section 705; Section 710; Section 715; and Section 720.

(B) Emissions Inspection and Maintenance Requirements for Motor Vehicles 18 AAC 52. (*1*) Effective January 1, 1998: Section 005; Section 010; Section 015; Section 020; Section 025; Section 035; Section 037; Section 050; Section 060, except for subsections (8)(c), (8)(d)(2) and (8)(e); Section 065; Section 070; Section 080; Section 085; Section 095; Section 100; Section 105; Section 400; Section 405; Section 415, except subsection (f)(1); Section 420, except subsection (a)(11); Section 425; Section 440; Section 500; Section 515; Section 520, except subsection (c)(9); Section 525; Section 527; Section 530, except subsections (b)(3), (c)(4)(C) and (d)(9); Section 535; Section 540; Section 545; Section 546; Section 990.

(*2*) Effective January 1, 1997: Section 055; 090.

(*3*) Remove the following provisions of 18 AAC 52, effective January 1, 1997: Section 060, subsection 8(c) and 8(e); Section 520, subsection (c)(9).

(*4*) Remove the following provisions of 18 AAC 52, effective January 1, 1998: Section 060, subsection 8(d)(2); Section 415, subsection (f)(1); Section 420, subsection (a)(11); Section 530, subsection (b)(3) and (d)(9).

(*5*) Remove the following provisions of 18 AAC 52, effective January 4, 1995: Section 530, subsection (c)(4)(c).

(C) Fuel Requirements for Motor Vehicles 18 AAC 53.

(*1*) Effective October 31, 1997: Section 05; Section 07; Section 10; Section 20; Section 30; Section 35; Section 40; Section 45; Section 60; Section 70; Section 80; Section 90; Section 200; Section 105; Section 120; Section 130; Section 140; Section 150; Section 160; Section 170; Section 190 and effective September 4, 1998, Section 990.

(*2*) Remove the following provision of 18 AAC 53.015, Expansion of Control Area, effective October 31, 1997.

(ii) Additional material.

(A) Revisions to Alaska's State Air Quality Control Plan, Volume II: Section I, ''Background,'' I.A; I.B., I.C., I.D., and I.E., adopted 11/26/96; Part B—Anchorage Contingency Measures, adopted 5/18/98; Section II, ''State Air Quality Control Program,'' pages II–1 through II–4, adopted 5/18/98; Section III.A. ''Statewide Carbon Monoxide Control Program,'' pages III.A.1–1 through III.A.3–4, adopted 5/18/98; III.B. ''Anchorage Transportation Control Program,'' pages III.B.1–1 through III.B.6–7, adopted 5/18/98; III.B.8. ''Modeling and Projections,'' pages III.B.8–1 through III.B.9–2, adopted 5/18/98; III.B.10, ''Anchorage Air Pollution Episode Curtailment Plan,'' pages III.B.10–1 and III.B.10–2, revised 12/19/93; III.B.11. ''Assurance of Adequacy,'' pages III.B.11–1 through III.B.11–3, revised 5/18/98; III.B.12. ''Emissions Budget,'' page III.B.12–1, adopted 11/26/96; and various CO SIP streamlining edits throughout Volume II and Volume III of the State Air Quality Control Plan which make the document easier to read and better organized, adopted 5/18/98.

[FR Doc. 99–22450 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket# MA–068–7203c; FRL–6430–6]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Massachusetts; Plan for Controlling MWC Emissions From Existing MWC Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; withdrawal.

SUMMARY: On July 14, 1999, EPA published a direct final rule (64 FR 37851) approving, and an accompanying proposed rule (64 FR 37923) proposing to approve, a State Plan submitted by the Commonwealth of Massachusetts on January 11, 1999. This State Plan, which is under sections 129 and 111(d) of the Clean Air Act, proposes provisions that are at least as protective as EPA's Emission Guidelines (EG). The EG are applicable to existing Municipal Waste Combustor (MWC) units with a capacity to combust more than 250 tons/day of municipal solid waste. *See* 40 CFR part 60, subpart Cb. EPA is withdrawing this direct final rule because adverse comments have been received. EPA will now consider, summarize and respond to any comments received before taking final action on the State Plan.

DATES: As of September 1, 1999, EPA withdraws the direct final rulemaking published on July 14, 1999.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA.

FOR FURTHER INFORMATION CONTACT: John J. Courcier, (617) 918–1659.

Dated: August 23, 1999.

John P. DeVillars,

Regional Administrator, Region 1.

[FR Doc. 99–22629 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300904; FRL–6094–3]

RIN 2070–AB78

Difenoconazole; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of difenoconazole [[(2S,4R)/(2R,4S)/(2R,4R)/(2S,4S)]1-[2-[4-(4-chlorophenoxy)-2-chlorophenyl]-4-methyl-1,3-dioxolan-2-yl-methyl]-1*H*-1,2,4-triazole] in or on sweet corn commodities. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on sweet corn seed. This regulation establishes a maximum permissible level for residues of difenoconazole in these food and feed commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and are revoked on January 31, 2001.

DATES: This regulation is effective September 1, 1999. Objections and requests for hearings must be received by EPA on or before November 1, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300904], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300904], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300904]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 271, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9356, beard.andrea@epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for residues of the fungicide difenoconazole, in or on sweet corn seed, forage, and stover at 0.1 part per million (ppm). These tolerances will expire and are revoked on January 31, 2001. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

I. Background and Statutory Findings

The Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) was signed into law August 3, 1996. FQPA amends both the FFDCA, 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described in this preamble and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Difenoconazole on Sweet Corn Seed and FFDCA Tolerances

Idaho leads the nation in production of SH2 hybrid sweet corn seed, accounting for more than 90% of the total U.S. production. SH2 hybrids are used in the production of super sweet varieties of fresh market and processing sweet corn. In the past, captafol was used in combination with other registered fungicides as a sweet corn seed protectant. However, all captafol uses were voluntarily canceled in May of 1987 as a result of the captafol Special Review. According to the Applicant, the currently registered fungicides available for use on sweet corn provide only marginal control of dieback syndrome (brought on by fungal pathogens, *Penicillium*, *Pythium*, and *Fusarium* species) on hybrid sweet corn varieties. If difenoconazole is not available for use, stand reductions of 20–60% could occur, resulting in significant economic losses for Idaho's sweet corn seed producers, and sweet corn growers in other States, such as Florida where the disease problem is particularly severe. Prior to this year, Idaho received exemptions for use of another material, imazalil, for this situation; however, issues surfaced last year concerning imazalil and EPA could not make the safety finding as required under FQPA for the imazalil use. EPA has authorized under FIFRA section 18 the use of difenoconazole on sweet corn seed for control of fungal pathogens in Idaho. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of difenoconazole in or on sweet corn commodities. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on January 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on sweet corn commodities after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed levels that were authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether difenoconazole meets EPA's registration requirements for use on sweet corn seed or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as basis for registration of difenoconazole by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Idaho to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for difenoconazole, contact the Agency's Registration Division at the address provided under the ''ADDRESSES'' section.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7) .

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of difenoconazole and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of difenoconazole on sweet corn seed, stover, and forage at 0.1 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by difenoconazole are discussed in this unit.

B. Toxicological Endpoints

1. *Acute toxicity*. Based on the available acute toxicity data, EPA has determined that the no observable adverse effect level (NOAEL) of 25

milligrams per kilograms body weight per day (mg/kg/bwt/day) from the developmental study in rabbits should be used to assess risk from acute toxicity. Increases in post-implantation loss and resorption, decreases in fetal body weight, and decreases in body weight gains and food consumption in dams, were observed at the lowest obsevable adverse effect level (LOAEL) of 75 mg/kg/day. Using the uncertainty factors (UFs) of 10x for interspecies and 10x for intraspecies variations, the acute Reference Dose (RfD) is 0.25 mg/kg/day. The acute risk assessment will evaluate acute dietary risk to females 13+ years, the population subgroup of concern.

2. *Short- and intermediate-term toxicity.* For short-term Margin of Exposure (MOE) calculations, the developmental NOAEL of 25 mg/kg/day, from the developmental rabbit study will be used, with a dermal absorption factor adjustment of 75%. At the LOAEL of 75 mg/kg/day, there were increased post-implantation losses and resorptions per dose, a significant decrease in fetal body weight, and decrease in body weight gains and food consumption in the dams.

For intermediate-term MOE calculations, the NOAEL of 1.25 mg/kg/day from the 2–generation study in rats will be used. At the LOAEL of 12.5 mg/kg/day, there were decreased pup weights.

3. *Chronic toxicity*. EPA has established the RfD for difenoconazole at 0.01 mg/kg/day. This RfD is based on cumulative decreases in body weight gains at the LOAEL of 24.0 mg/kg/day from the chronic feeding/oncogenicity study in rats with a NOAEL of 0.96 mg/kg/day, and an uncertainty factor of 100.

4. *Carcinogenicity*. Difenoconazole has been classified as a Group C possible carcinogen, based on statistically significant increases in liver adenomas, carcinomas, and combined adenomas and carcinomas in both sexes of CD–1 mice, only at doses that were considered to be excessively high for carcinogenicity testing. The MOE approach was recommended for risk assessments, because there was only very weak evidence of carcinogenic potential at dose levels not considered to be excessive, with significant changes seen only at excessive doses. Additionally, there was no evidence of genotoxicity. However, at this time, the Agency has not defined the acceptable level of concern for cancer risk using the MOE approach. Therefore, a quantitative risk analysis was conducted utilizing the Q_1* approach. The Q_1* was calculated to be 1.57×10^{-1} (mg/kg/day)$^{-1}$.

C. Exposures and Risks

1. *From food and feed uses.* Permanent tolerances have been established (40 CFR 180.475) for the residues of difenoconazole, in or on wheat and livestock commodities ranging from 0.05 to 0.1 ppm and on bananas (import) at 0.2 ppm. Risk assessments were conducted by EPA to assess dietary exposures and risks from difenoconazole as follows:

i. Acute exposure and risk. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. EPA's detailed acute analysis estimated the distribution of single-day exposures for the subgroup Females 13+ Years Old. An evaluation was not conducted for the overall U.S. population and infant and children subgroups, because oral toxicological studies did not demonstrate effects on these groups that could be attributable to a single dose exposure. The Dietary Exposure Evaluation Model (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–91 Nationwide Continuing Surveys for Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. This acute exposure analysis was performed assuming tolerance level residues and 100% crop treated. Taking into account published and proposed tolerances (including these for sweet corn commodities), at the 95th percentile, the exposure utilized less than 1% of the RfD for the population subgroup of concern, Females 13+ Yrs. Old. Therefore, the level of concern is not exceeded.

ii. *Chronic exposure and risk.* The chronic risk assessment was conducted using mean consumption (3–day average) values, and was refined using anticipated residues and percent of crop treated (PCT) information for select commodities. The RfD of 0.01 mg/kg/day and an uncertainty factor of 100 were used. Since it was determined that the FQPA UF of 3x was not necessary, acceptable dietary exposure must not exceed 100% of the chronic RfD for all population subgroups. The Novigen DEEM system was used for this chronic dietary exposure analysis.The subgroups listed below are: (1) the U.S. Population (48 contiguous States); (2) those for infants and children; and, (3) the other subgroups (adult) for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. Population (48 contiguous States). The results are summarized below.

Population Subgroup	Exposure (mg/kg bwt/day)	% Chronic RfD
U.S. Population (48 contiguous States).	0.000005	< 1
All Infants (< 1 yr)	0.000016	< 1
Nursing Infants (<1 yr).	0.000007	< 1
Non-nursing Infants (<1 yr).	0.000019	< 1
Children (1–6 yrs)	0.000011	< 1
Children (7–12 yrs) ..	0.000005	< 1
Females (13+ yrs / Nursing).	0.000006	< 1
Seniors (55+ yrs)	0.000006	< 1
Non-Hispanic, Other than Black/White.	0.000006	< 1

As shown in the above table, chronic dietary risk does not exceed the level of concern for any of the population subgroups.

iii. *Cancer exposure and risk*. The Agency previously classified difenoconazole as a possible human carcinogen; this chemical would now be classified as a likely human carcinogen in accordance with the Agency's ''Proposed Guidelines for Carcinogenic Risk Assessment'' (April 10, 1996). As previously explained in this document, a non-linear, MOE approach was recommended to quantify human cancer risk from difenoconazole. However, at this time the Agency has not defined the acceptable level of concern for cancer risk using the MOE approach. Therefore, the linear Q_1* approach was used for calculating cancer risk. A Q_1* of 0.157 (mg/kg/day)$^{-1}$ was determined based on the male mouse liver adenoma and/or carcinoma combined tumor rates in the 78–week cancer study in mice. The exposure analysis estimating potential cancer risks for difenoconazole was performed using anticipated residues and PCT or percent imported, as refinements, for selected commodities, to determine Estimated Lifetime Cancer Risk for the general population. The DEEM analysis was used, as described previously, and the partially refined exposure estimate calculated for the U.S. population (48 contiguous States) was 0.000005 mg/kg/day, translating to a lifetime cancer risk estimate of 8.4×10^{-7} from residues in food. This cancer risk estimate does not exceed the Agency's level of concern.

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have

been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Anticipated residue data used in the current dietary risk analysis were calculated from field trial data. The anticipated residues used were 0.01 ppm for bananas; 0.000019 for eggs; 0.0000043 ppm for egg whites; 0.000046 ppm for egg yolks; 0.000041 ppm for fat of cattle, goats, hogs, horses, and sheep; 0.00012 ppm for kidney of cattle, goats, hogs, horses, and sheep; 0.000014 ppm for meat of cattle, goats, hogs, horses, and sheep; 0.00044 ppm for meat byproducts (except kidney) of cattle, goats, hogs, horses, and sheep; 0.000013 ppm for milk; 0.01 ppm for plantains; 0.0000030 ppm for poultry fat; 0.000034 ppm for poultry kidney; 0.000006 ppm for poultry meat; 0.000023 ppm for poultry meat byproducts (except kidney); 0.005 ppm for sweet corn; and 0.005 ppm for wheat grain.

Section 408(b)(2)(F) States that the Agency may use data on the actual PCT for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by the section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

Three PCT for sweet corn, 9 PCT for wheat, and 10.5% imported for barley. The percent imported data are used in the same way PCT data are used. This refinement is used because difenoconazole is not registered for use in the United States. The percentage means that 10.5% of the barley used (potentially or actually) for human consumption in the United States is imported; it is even more conservative because it also assumes that all such imported barley has difenoconazole residues.

The Agency believes that the three conditions, discussed in section 408(b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. The PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of the PCT, the Agency is reasonably certain that the percentage of the food treated is not likely to be underestimated. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which difenoconazole may be applied in a particular area.

2. *From drinking water.* The Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water exposure analysis and risk assessment for difenoconazole. Because the Agency does not have comprehensive and reliable monitoring data, drinking water concentration estimates must be made by reliance on some sort of simulation or modeling. To date, there are no validated modeling approaches for reliably predicting pesticide levels in drinking water. The Agency is currently relying on GENEEC and PRZM/EXAMS for surface water, which are used to produce estimates of pesticide concentrations in a farm pond and SCI-GROW, which predicts pesticide concentrations in ground water. None of these models include consideration of the impact that processing of raw water, for distribution as drinking water, would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

In the absence of monitoring data for pesticides, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and residential uses. A DWLOC will vary depending on the toxic endpoint, with drinking water consumption, and body weights. Different populations will have different DWLOCs. DWLOCs are used in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. DWLOC values are not regulatory standards for drinking water. Since DWLOCs address total aggregate exposure to difenoconazole, they are further discussed in the aggregate risk sections below.

3. *From non-dietary exposure.* Difenoconazole is not currently registered for use on any residential non-food sites. Therefore, there are no exposures and risks from non-dietary residential exposure.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether difenoconazole has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, difenoconazole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that difenoconazole has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for

Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* From the acute dietary (food only) risk assessment, a high-end exposure estimate was calculated for the population subgroup of concern, Females 13+ years. For this group, less than 1% of the RfD is occupied by dietary (food only) exposure. This small percentage of the acute RfD utilized by this exposure provides assurance that there is reasonable certainty that no harm will result to both Females 13+ years, and to the prenatal development of infants. Acute effects for the general population are not expected.

The maximum estimated concentrations of difenoconazole in surface and ground water are less than the DWLOCs for difenoconazole as a contribution to acute aggregate exposure. Therefore, EPA concludes with reasonable certainty that residues of difenoconazole in drinking water will not contribute significantly to the aggregate acute human health risk.

2. *Chronic risk.* Using the ARC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to difenoconazole from food will utilize <1% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants (<1 yr. old), still at <1% of the RfD. This is further discussed below in the section on infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The estimated concentrations of difenoconazole in surface and ground water are less than the DWLOCs for difenoconazole as a contribution to chronic aggregate exposure. Therefore, EPA concludes with reasonable certainty that residues of difenoconazole in drinking water will not contribute significantly to the aggregate chronic human health risk. Despite the potential for exposure to difenoconazole in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

Since no registered residential uses or exposure scenarios were identified for short- and intermediate-term exposure, these risk assessments are not required.

4. *Aggregate cancer risk for U.S. population.* The DEEM dietary exposure analysis used anticipated residues and PCT information for selected commodities, to estimate the lifetime cancer risk for the general population. Using the dietary exposure estimate of 0.000005 mg/kg/day, the lifetime dietary cancer risk was calculated to be 8.4 x 10^{-7}. The estimated average concentrations of difenoconazole in surface and ground water are less than the DWLOCs for difenoconazole as a contribution to cancer aggregate exposure. Therefore, EPA concludes with reasonable certainty that residues which may occur in drinking water do not contribute significantly to the aggregate chronic human health risk. Thus, aggregate cancer risk estimates associated with exposure to difenoconazole from food and water do not exceed levels of concern.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is reasonable certainty that no harm will result from aggregate exposure to difenoconazole residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children* —i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of difenoconazole, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In a developmental study in rats, the NOAEL for maternal toxicity was 20 mg/kg/day, based upon statistically significant decreases in maternal body weight gain and feed consumption at the LOAEL of 100 mg/kg/day. The NOAEL for developmental toxicity was 100 mg/kg/day, based upon the incidence of bifid or unilateral ossification of the thoracic vertebrae, and significant increases in the average number of ossified hyoid and decreases in the number of sternal centers of ossification. The average number of ribs was also significantly increased with accompanying increases in the number of thoracic vertebrae and decreases in the number of lumbar vertebrae. These effects were observed at the LOAEL of 200 mg/kg/day.

In a developmental study in rabbits, the NOAEL for maternal toxicity was 25 mg/kg/day, based upon decreases in body weight gain and food consumption seen at the LOAEL of 75 mg/kg/day. The developmental toxicity NOAEL was also 25 mg/kg/day, with increases in post-implantation loss and resorptions, and decreases in fetal body weight, seen at the LOAEL of 75 mg/kg/day.

iii. *Reproductive toxicity study.* In a 2–generation reproduction study in rats, the NOAEL for parental toxicity was 25 ppm (1.25 mg/kg/day), based upon decreased maternal body weight gain at the LOAEL of 250 ppm (12.5 mg/kg/day). The NOAEL for reproductive toxicity was also 25 ppm, based upon decreased pup weights at day 21, at the LOAEL of 250 ppm.

iv. *Prenatal and postnatal sensitivity.* The FQPA Safety Factor Committee recommended that the 10x safety factor for enhanced sensitivity to infants and children be reduced to a 1x factor, since the toxicology data base is complete, and there is no indication of increased susceptibility of rats or rabbit fetuses to prenatal or postnatal exposure.

v. *Conclusion.* There is a complete toxicity data base for difenoconazole and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk.* An acute RfD is not established for the general population, including infants and children, because there were no effects observed in

toxicity studies (including maternal toxicity in the rabbit and rat developmental studies), which were attributable to a single exposure. Therefore, the Agency concludes that acute risks to infants and children are negligible.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to difenoconazole from food will utilize <1% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The estimated average concentrations of difenoconazole in surface and ground water are less than the Agency's DWLOC for chronic exposure among nursing infants (<1 year old) to difenoconazole. Despite the potential for exposure to difenoconazole in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk.* Since no registered residential uses or exposure scenarios were identified for short- and intermediate-term exposure, these risk assessments are not required.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to difenoconazole residues.

IV. Other Considerations

A. Metabolism in Plants and Animals

The nature of the residues of difenoconazole in plants and animals is considered to be adequately understood. Based on acceptable metabolism studies, the Agency concluded that none of the difenoconazole metabolites warrant inclusion in the tolerance regulation, separate regulation, inclusion in the dietary risk assessment, or additional metabolism or toxicological studies. Therefore, the residue of concern is the parent compound, difenoconazole per se, as specified in 40 CFR 180.475.

B. Analytical Enforcement Methodology

An adequate enforcement method (Method AG–575B, MRID# 428065–04) is available for enforcement purposes. The method is Gas-Liquid Chromatography, using a nitrogen/phosphorus detector, which has been validated for wheat, barley, and bananas. EPA expects that this method will be adequate for these proposed tolerances for sweet corn commodities as well.

The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues.

Residues of difenoconazole are not expected to exceed 0.1 ppm in/on corn, sweet (kernel + corn with husk removed); corn, sweet, forage; or corn, sweet, stover, as a result of the section 18 use. Secondary residues are not expected in animal commodities as a result of this use.

D. International Residue Limits.

There are pending Codex MRLs for this compound in Mexico for oat, wheat, and barley. There are MRLs for this compound in Australia for carrots (0.5 ppm), potatoes (0.02 ppm), and bananas (0.5 ppm). There are no Codex residue limits established for difenoconazole in/on the sweet corn commodities listed above, and thus harmonization is not an issue for this action.

E. Rotational Crop Restrictions.

There is a 30–day plantback restriction for all rotational crops.

V. Conclusion

Therefore, the tolerances are established for residues of difenoconazole [(2S,4R)/(2R,4S)/(2R,4R)/(2S,4S)]1-[2-[4-(4-chlorophenoxy)-2-chlorophenyl]-4-methyl-1,3-dioxolan-2-yl-methyl]-1*H*-1,2,4-triazole in/on corn, sweet (kernel + corn with husk removed); corn, sweet, forage; and corn, sweet, stover at 0.1 ppm.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by November 1, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record.

Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300904] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:
opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure,

Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 13, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. In § 180.475, by adding paragraph (b) to read as follows:

§ 180.475 Difenoconazole; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of difenoconazole in connection with use of this pesticide under a section 18 emergency exemption granted by EPA. The tolerances will expire on the dates specified in the following table.

Commodity	Parts per million	Expiration/revocation date
Corn, sweet (kernel + corn with husk removed).	0.1	1/31/01
Corn, sweet, forage ..	0.1	1/31/01
Corn, sweet, stover ...	0.1	1/31/01

* * * * *

[FR Doc. 99–22635 Filed 8–31–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300903; FRL–6094–4]

RIN 2070–AB78

Cymoxanil; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for residues of the fungicide cymoxanil in or on dried hops at 1 part per million (ppm) for an additional 1½–year period. This tolerance will expire and is revoked on October 15, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on hops. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective September 1, 1999. Objections and requests for hearings must be received by EPA, on or before November 1, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300903], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300903], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300903]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 280, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703 308–9364, pemberton.libby@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of December 2, 1998 (63 FR 66459) (FRL–6038–5), which announced that on its own initiative under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the residues of cymoxanil in or on dried hops at 1 ppm, with an expiration date of April 15, 2000. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of cymoxanil on hops for this year's growing season due to the continued need for control of downy mildew. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of cymoxanil on hops for control of downy mildew in Idaho and Oregon.

EPA assessed the potential risks presented by residues of cymoxanil in or on dried hops. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of December 2, 1998 (63 FR 66459). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1½-year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on

October 15, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on dried hops after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by November 1, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300903] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 13, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.503 [Amended]

2. In § 180.503, by amending the table in paragraph (b) by revising the date ''4/15/00'' to read ''10/15/01''.

[FR Doc. 99–22634 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300910; FRL–6095–8]

RIN 2070–AB78

Chlorfenapyr; Re-Establishment of Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation re-establishes time-limited tolerances for residues of the insecticide chlorfenapyr and its metabolites in or on cottonseed and cotton gin byproducts at 0.5 and 2.0 part per million (ppm), respectively, and in livestock commodities at levels ranging from 0.01 to 0.3 ppm, for an additional 1½–year period. These tolerances will expire and are revoked on January 31, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on cotton. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the FIFRA.

DATES: This regulation is effective September 1, 1999. Objections and requests for hearings, identified by docket control number OPP–300910, must be received by EPA on or before November 1, 1999.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300910 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–9356; and e-mail address: beard.andrea@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
.....	112	Animal production
.....	311	Food manufacturing
.....	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''Federal Register--Environmental Documents.'' You can also go directly to the Federal Register listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–300910. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of August 22, 1997 (62 FR 44565) (FRL–5737–7), which announced that on its own initiative under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established time-limited tolerances for the residues of chlorfenapyr and its metabolites in or on cotton and livestock commodities at levels ranging from 0.01 to 2.0 ppm, with an expiration date of July 31, 1999. EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of chlorfenapyr on cotton for this year's growing season due to the situation remaining an emergency. Beet armyworm has infested cotton fields to a high degree in recent growing seasons. EPA received requests from 11 states for this use this year: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. This pest had not previously been a significant pest in cotton, and had been controlled with available alternatives. However, in recent years, beet armyworm populations have reached devastating levels in southeastern cotton-growing areas, and registered alternatives have proven to provide inadequate control to prevent significant economic losses from occurring. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of chlorfenapyr on cotton for control of beet armyworm in cotton in the above-named 11 states.

EPA assessed the potential risks presented by residues of chlorfenapyr in or on cotton. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of August 22, 1997 (62 FR 44565) (FRL–5737–7). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are re-established for an additional 1½–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on January 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on cotton after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300910 in the subject line

on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 1, 1999.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission be labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A. of this preamble, you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. of this preamble. Mail your copies, identified by docket number OPP–300910, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. of this preamble. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: August 13, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.513 [Amended]

2. In § 180.513, by amending the table in paragraph (b) by revising the date ''7/31/99'' wherever it appears to read ''1/31/01''.

[FR Doc. 99–22633 Filed 8–31–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6430–4]

Indiana: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Indiana has applied for final authorization of the revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The revision basically covers regulatory changes that appeared in the **Federal Register** between July 1, 1992 and June 30, 1995, in addition, the revision includes Miscellaneous Units, and all minor rules appearing in the **Federal Register** between July 1, 1995 and June 30, 1997. The EPA has reviewed Indiana's application and determined that its hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. EPA is authorizing the state program revision through this immediate final action. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action and does not anticipate adverse comments. However, in the proposed rules section of this **Federal Register**, EPA is publishing a separate document that will serve as a proposal to authorize the revision should the Agency receive adverse comment. Unless EPA receives adverse written comments during the review and comment period, the decision to authorize Indiana's hazardous waste program revision will take effect as provided below.

DATES: This final authorization for Indiana will become effective without further notice on November 30, 1999, unless EPA receives adverse comment by October 1, 1999. Should EPA receive such comments it will publish a timely withdrawal informing the public that the rule will not take effect.

ADDRESSES: Send written comments referring to Docket Number Indiana ARA 14, to Gary Westefer, Indiana Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7450. Copies of the Indiana program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 9:00 am to 4:00 pm at the following addresses: Indiana Department of Environmental Management, 100 North Senate, Indianapolis, Indiana, contact Lynn West, (317) 232–3593, and EPA Region 5, contact Gary Westefer at the following address.

FOR FURTHER INFORMATION CONTACT: Gary Westefer, Indiana Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal hazardous waste program changes, the States must revise their programs and apply for authorization of the revisions. Revisions to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. Indiana

Indiana initially received Final Authorization on January 31, 1986, effective January 31, 1986 (51 FR 3955) to implement its base hazardous waste management program. Indiana received authorization for revisions to its program on October 31, 1986 (51 FR 39752) effective December 31, 1986, on January 5, 1988 (53 FR 128), effective January 19, 1988, on July 13, 1989 (54 FR29557), effective September 11, 1989, on July 23, 1991 (56 FR 33717), effective September 23, 1991, on July 24, 1991 (56 FR 33866), effective September 23, 1991, on July 29, 1991 (56 FR 35831), effective September 27, 1991, on July 30, 1991 (56 FR 36010), effective September 30, 1991, on August 20, 1996 (61 FR 43008), effective October 21, 1996, and on August 20, 1996 (61 FR 43018), effective October 21, 1996.

EPA uses 40 CFR part 272 for codification of the decision to authorize Indiana's program and for incorporation by reference of those provisions of its statutes and regulations that EPA will enforce under sections 3008, 3013 and 7003 of RCRA. The authorized Indiana RCRA program was incorporated by reference into the CFR on August 23, 1989 (54 FR 34988) effective October 23, 1989. An update to this incorporation by reference is in process and will appear in 40 CFR part 272, subpart P at a later date.

On May 1, 1997, February 18, 1998 and June 22, 1999, Indiana submitted final complete program revision applications, seeking authorization of its program revision in accordance with 40 CFR 271.21. The EPA reviewed Indiana's applications, and now makes an immediate final decision, subject to receipt of adverse written comment, that Indiana's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final Authorization. Consequently, EPA intends to grant Indiana Final Authorization for the program modifications contained in the revision.

Indiana is applying for authorization for changes and additions to the Federal RCRA implementing regulations that were promulgated between December 10, 1987 and June 30, 1997, as listed below:

Description of federal requirement	**Federal Register** date and page [*and/or RCRA statutory authority*]	Analogous state authority [1]
Hazardous Waste Miscellaneous Units/Checklist 45 ...	December 10, 1987, 52 FR 46496	329 IAC 3.1–4–1, 3.1–9–1, 3.1–13–1 effective February 24, 1992.

Description of federal requirement	**Federal Register** date and page [*and/or RCRA statutory authority*]	Analogous state authority [1]
Hazardous Waste Miscellaneous Units (Clarification and Correction)/Checklist 59.	January 9, 1989, 54 FR 615	329 IAC 3.1–13–1, 3.1–13–2(8),(9) effective February 24, 1992.
Used Oil Filter Exclusion; Technical Correction/ Checklist 107.	July 1, 1992, 57 FR 29220	329 IAC 3.1–6–1, 3.1–6–2(6) effective March 5, 1997.
Toxicity Characteristics Revision/Checklist 108	July 7, 1992, 57 FR 30657	329 IAC 3.1–6–1, 3.1–6–2(6), 3.1–10–1, 3.1–10–2(18),(19) effective August 17, 1996.
Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris/Checklist 109.	August 18, 1992, 57 FR 37194	329 IAC 3.1–4–1, 3.1–6–1, 3.1–7–1, 3.1–9–1, 3.1–9–2(8), 3.1–10–1, 3.1–10–2, 3.1–10–2(12), 3.1–10–2(13), 3.1–12–1, 3.1–12–2(1),(2),(3), 3.1–12–2(6), 3.1–12–2(8),(9), 3.1–13–1, 3.1–13–2(8),(9), 3.1–14, 3.1–15, 3.1–15–3 effective August 17, 1996.
Coke By-Product Listings/Checklist 110	August 18, 1992, 57 FR 37284	329 IAC 3.1–6–1, 3.1–6–2(6) effective August 17, 1996.
Financial Responsibility for Third Party Liability, Closure and Post Closure/Checklist 113.	September 16, 1992, 57 FR 42832.	329 IAC 3.1–9–1, 3.1–9–2(8), 3.1–10–1, 3.1–10–2(13), 3.1–14, 3.1–14–26 through 3.1–14–40, 3.1–15, 3.1–15–4, 3.1–15–8, 3.1–15–9, 3.1–15–10 effective May 1, 1996.
Standards Applicable to Owners and Operators of Hazardous Waste treatment, storage and Disposal Facilities; Liability Coverage/Checklist 113.1.	September 1, 1988, 53 FR 33938	329 IAC 3.1–9–1, 3.1–9–2(8), 3.1–10–1, 3.1–10–2(13), 3.1–14, 3.1–14–26 through 3.1–14–40, 3.1–15, 3.1–15–2, 3.1–15–8, 3.1–15–9, 3.1–15–10 effective May 1, 1996.
Liability Requirements; Technical Amendment/Checklist 113.2.	July 1, 1991, 56 FR 30200	329 IAC 3.1–9–1, 3.1–9–2(8), 3.1–10–1, 3.1–10–2(13), 3.1–14, 3.1–15, 3.1–15–8, 3.1–15–9, 3.1–15–10 effective May 1, 1996.
Chlorinated Toluene Production Waste Listing/Checklist 115.	October 15, 1992, 57 FR 47376 ...	329 IAC 3.1–6–1 effective August 17, 1996.
Hazardous Soil Case-By-Case Capacity Variance/ Checklist 116.	October 20, 1992, 57 FR 47772 ...	329 IAC 3.1–12–1, 3.1–12–2(10) effective August 17, 1996.
Mixture and Derived-From Rules; Response to Court Remand/Checklist 117A.	March 3, 1992, 57 FR 7628	329 IAC 3.1–6–1 effective August 17, 1996.
Mixture and Derived-From Rules; Technical Correction/Checklist 117A.1.	June 1, 1992 57 FR 23062	329 IAC 3.1–6–1 effective August 17, 1996.
Mixture and Derived-From Rules; Final Rule/Checklist 117A.2.	October 20, 1992 57 FR 49278	329 IAC 3.1–6–1 effective August 17, 1996.
Toxicity Characteristic Revision/Checklist 117B	June 1, 1992 57 FR 23062	329 IAC. 3.1–6–1 effective August 17, 1996.
Liquids in Landfills II/Checklist 118	November 18, 1992 57 FR 54452	329 IAC 3.1–4–1, 3.1–9–1, 3.1–10–1, 3.1–10–2(20) effective August 17, 1996.
Toxicity Characteristic Revision; TCLP/Checklist 119 as amended/Checklist 119.1.	November 24, 1992 57 FR 55114 February 2, 1993 58 FR 6854	329 IAC 3.1–6–1 effective August 17, 1996.
Wood Preserving; Amendments to Listings and Technical Requirements/Checklist 120.	December 24, 1992 57 FR 61492	329 IAC 3.1–6–1, 3.1–9–1, 3.1–10–1 effective August 17, 1996.
Corrective Action Management Units and Temporary Units; Corrective Action Provisions Under Subtitle C/Checklist 121.	February 16, 1993 58 FR 8658	329 IAC 3.1–4–1, 3.1–9–1, 3.1–10–1, 3.1–10–2(1),(2),(3), 3.1–12–1, 3.1–12–2(6), 3.1–13–1 effective August 17, 1996.
Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case-By-Case Capacity Variance/Checklist 123.	May 14, 1993 58 FR 28506	329 IAC 3.1–12–1, 3.1–12–2(10) effective August 17, 1996.
Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards. Were Vacated/Checklist 124.	May 24, 1993 58 FR 29860	329 IAC 3.1–9–1, 3.1–9–2(1),(2), 3.1–10–1, 3.1–10–2(1),(2),(3), 3.1–12–1, 3.1–12–2(1),(2),(3),(4),(5),(6), 3.1–12–2(8) effective August 17, 1996.
Testing and Monitoring Activities/Checklist 126 as amended/Checklist 126.1.	August 31, 1993 58 FR 46040 ..... September 19, 1994 59 FR 47980	329 IAC 3.1–1–7, 3.1–5–2, 3.1–6–1. 3.1–9–1, 3.1–10–1, 3.1–10–2(20), 3.1–12–1, 3.1–13–1 effective August 17, 1996.
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Wastes from Wood Surface Protection/Checklist 128.	January 4, 1994 59 FR 458	329 IAC 3.1–1–7, 3.1–6–1 effective August 17, 1996.
Hazardous Waste Management System; Identification and Listing of Hazardous Waste, Treatability Studies Sample Exclusion/Checklist 129.	March 24, 1994 59 FR 13891	329 IAC 3.1–9–1, 3.1–10–1 effective August 17, 1996.
Recordkeeping Instructions/Checklist 131	March 24, 1994 59 FR 13891	329 IAC 3.1–9–1, 3.1–10–1 effective August 17, 1996.
Hazardous Waste Management System; Identification and Listing of Hazardous Wastes; Wastes from Wood Surface Protection; Correction/Checklist 132.	June 2, 1994 59 FR 28484	329 IAC 3.1–1–7 effective Augest 17, 1996.
Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilites, Underground Storage Tanks, and Underground Injection Control Systems; Financial Assurance; Letter of Credit/Checklist 133.	June 10, 1994 59 FR 29958	329 IAC 3.1–9–1, 3.1–9–2(8), 3.1–14–26 through 3.1–14–40 effective May 1, 1996.
Hazardous Waste Management System; Correction of Listing of P015–Beryllium Powder/Checklist 134.	June 20, 1994 59 FR 31551	329 IAC 3.1–6–1, 3.1–12–1, 3.1–12–2(1),(2),(3) effective August 17, 1996.

Description of federal requirement	**Federal Register** date and page [*and/or RCRA statutory authority*]	Analogous state authority [1]
Identification and Listing of Hazardous Waste; Amendments to Definition of Hazardous Waste/ Checklist 135.	July 28, 1994 59 FR 38536	329 IAC 3.1–6–1, 3.1–6–2(4), 3.1–6–2(6), 3.1–11–1 effective August 17, 1996.
Standards for the Management of Specific Hazardous Wastes; Amendment to Subpart C—Recyclable Materials Used in a Manner Constituting Disposal; Final Rule/Checklist 136.	August 24, 1994 59 FR 43496	329 IAC 3.1–11–1, 3.1–12–1 effective August 17, 1996.
Land Disposal Restrictions Phase II—Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Waste and Newly Listed Waste/Checklist 137 as amended/Checklist 137.1.	September 19, 1994 59 FR 47982 January 3, 1995 60 FR 242	329 IAC 3.1–5–4, 3.1–6–1, 3.1–6–2(2), 3.1–9–1, 3.1–9–2(1),(2), 3.1–10–1, 3.1–10–2(1),(2),(3), 3.1–11–1, 3.1–11–2(1), 3.1–12–1, 3.1–12–2 (1 through 6), 3.1–12–2(8) effective August 17, 1996.
Hazardus Waste Management System; Testing and Monitoring Activities/Checklist 139.	January 13, 1995 60 FR 3089	329 IAC 3.1–1–7 effective August 17, 1996.
Hazardous Waste Management System; Carbamate Production Identification and Listing of Harzardous Waste; and CERCLA Hazardous Substance Designation and Reportable Quantities/Checklist 140 as amended/Checklist 140.1 as amended/Checklist 140.2.	February 9, 1995 60 FR 7824 ..... April 17, 1995 60 FR 19165 ..... May 12, 1995 60 FR 25619	329 IAC 3.1–6–1 effective August 17, 1996.
Hazardous Waste Management System; Testing and Monitoring Activities/Checklist 141.	April 4, 1995 60 FR 17001	329 IAC 3.1–1–7 effective August 17, 1996.
Universal Waste Rule (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program); General Provisions/Checklist 142A.	May 11, 1995 60 FR 25492	329 IAC 3.1–1–1, 3.1–1–9, 3.1–4–1, 3.1–6–1, 3.1–6–2(3), 3.1–7–1, 3.1–9–1, 3.1–9–2(1),(2), 3.1–10–1, 3.1–10–2(1),(2),(3), 3.1–12–1, 3.1–12–2(4),(5), 3.1–13–1, 3.1–16–1, 3.1–16–2(1), 3.1–16–2(3), 3.1–16–2(5), 3.1–16–2(7) effective September 6, 1996.
Universal Waste Rule (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program); Specific Provisions for Batteries/Checklist 142B.	May 11, 1995 60 FR 25492	329 IAC 3.1–4–1, 3.1–6–1, 3.1–6–2(4), 3.1–9–1, 3.1–9–2(1),(2), 3.1–10–1, 3.1–10–2(1),(2),(3), 3.1–11–1, 3.1–12–1, 3.1–12–2(4),(5), 3.1–13–1, 3.1–16–1, 3.1–16–2(1 through 7) effective September 6, 1996.
Universal Waste Rule (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program); Specific Provisions for Pesticides/Checklist 142C.	May 11, 1995 60 FR 25492	329 IAC 3.1–4–1, 3.1–6–1, 3.1–9–1, 3.1–9–2(1),(2), 3.1–10–1, 3.1–10–2(1),(2),(3), 3.1–12–1, 3.1–12–2(4),(5), 3.1–13–1, 3.1–16–1, 3.1–16–2(1 through 7) effective September 6, 1996.
Universal Waste Rule (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program); Specific Provisions for Thermostats/Checklist 142D.	May 11, 1995 60 FR 25492	329 IAC 3.1–4–1, 3.1–6–1, 3.1–9–1, 3.1–9–2(1),(2), 3.1–10–1, 3.1–10–2(1),(2),(3), 3.1–12–1, 3.1–12–2(4),(5), 3.1–13–1, 3.1–16–1, 3.1–16–2(1 through 7) effective September 6, 1996.
Universal Waste Rule (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program); Provisions for Petitions to add a New Universal Waste/Checklist 142E.	May 11, 1995 60 FR 25492	329 IAC 3.1–5–2, 3.1–16–1, 3.1–16–2(8) effective September 6, 1996.
Solid Waste, Hazardous Waste, Oil Discharge and Superfund Programs; Removal of Legally Obsolete Rules/Checklist 144.	June 29, 1995 60 FR 33912	329 IAC 3.1–6–1, 3.1–11–1, 3.1–13–1, 3.1–13–2(6), 3.1–13–3 effective August 17, 1996.
Hazardous Waste Management; Liquids in Landfills/ Checklist 145.	July 11, 1995 60 FR 35703	329 IAC 3.1–9–1, 3.1–10–1, 3.1–10–2(20) effective February 8, 1997.
Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste/Checklist 150.	March 26, 1996 61 FR 13103	329 IAC 3.1–6–1, 3.1–6–2(6) effective February 8, 1997.
Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision/Checklist 152.	April 12, 1996 61 FR 16289	329 IAC 3.1–6–1, 3.1–6–2(4), 3.1–7–1, 3.1–7–2(5), 3.1–7–2(7),(8), 3.1–7–16, 3.1–8–1, 3.1–8–2(1 through 3), 3.1–9–1, 3.1–9–2(6), 3.1–10–1, 3.1–10–2(8), 3.1–11–1, 3.1–16–1 effective April 18, 1998.
Criteria for Classification of Solid Waste Disposal Facilities and Practices; Identification and Listing of Hazardous Waste; Requirements for Authorization of State Hazardous Waste Programs/Checklist 153.	July 1, 1996 61 FR 34252	329 IAC 3.1–6–1 effective April 18, 1998.
Land Disposal Restrictions Phase III Emergency Extension of the K088 Capacity Variance/Checklist 155.	January 14, 1997 62 FR 1992	329 IAC 3.1–12–1 effective April 18, 1998.

[1] The Indiana provisions are from the Indiana Administrative Code, unless otherwise stated.

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under

the provisions for which the State is being authorized on the effective date of this authorization. This program revision does not grant Indiana the authority to operate the Federal program in Indian country, within the State of Indiana, as defined in 18 U.S.C. 1151.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial program revision and do not anticipate adverse comment. However in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to authorize the revision if we receive adverse comments. This authorization will become effective without further notice on November 30, 1999, unless EPA receives adverse comment by October 1, 1999. Should EPA receive such comments it will publish a timely withdrawal informing the public that the rule will not take effect. We will address all public comments in a subsequent final action based on the proposed rule. EPA may not provide additional opportunity for comment. Any parties interested in commenting must do so at this time.

The public may submit written comments on EPA's immediate final decision until October 1, 1999. Copies of Indiana's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document. The **ADDRESSES** section also indicates where to send written comments on this action.

C. Decision

I conclude that Indiana's application for program revision authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, EPA grants Indiana Final Authorization to operate its hazardous waste program as revised. Indiana now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Indiana also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

The EPA uses 40 CFR part 272 for codification of the decision to authorize Indiana's program and for incorporation by reference of those provisions of its statutes and regulations that EPA will enforce under sections 3008, 3013 and 7003 of RCRA. EPA reserves amendment of 40 CFR part 272, subpart P until a later date.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the Indiana program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under the existing State laws that are now being authorized by EPA. The EPA's authorization does not impose any significant additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on

small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Compliance with Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. The State administers its hazardous waste program voluntarily, and any duties on other State, local or tribal governmental entities arise from that program, not from this action. Accordingly, the requirements of Executive Order 12875 do not apply to this rule.

Compliance With Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks,'' applies to any rule that: (1) the Office of Management and Budget determines is ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

Compliance With Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This rule is not subject to E.O. 13084 because it does not significantly or uniquely affects the communities of Indian tribal governments. Indiana is not authorized to implement the RCRA hazardous waste program in Indian country.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 272

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 99–22448 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC94

Disaster Assistance; Factors Considered When Evaluating a Governor's Request for a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: The Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) grants the President the authority for declarations of major disasters and emergencies. We, FEMA, provide a recommendation to the President whether Federal disaster assistance is warranted. This rule establishes the factors that we take into consideration when evaluating a Governor's request for a major disaster declaration under the Stafford Act. This rule does not affect presidential discretion, nor does it change published regulations and policies established under the Stafford Act.

EFFECTIVE DATE: This rule is effective October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Patricia Stahlschmidt, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, 202–646–4066, (facsimile) 202–646–4060, or (email) patricia.stahlschmidt@fema.gov.

SUPPLEMENTARY INFORMATION: On January 26, 1999, we published a proposed rule on factors considered when evaluating a Governor's request for a major disaster declaration under the Stafford Act, 42 U.S.C. 5121 *et seq.* in the **Federal Register** at 64 FR 3910. We invited comments for 90 days ending on April 26, 1999. We received nineteen sets of comments: seven from States; eight from various organizations; and, four from individuals. Comments varied widely. Some commentors objected to putting any factors in regulation; some thought that certain evaluation factors were too rigorous and restrictive; some thought them too vague and weak or subject to political influence; and, some supported the rule as written. All comments were appreciated and reviewed carefully. Following is a summary of the comments and our responses.

One State and one nongovernmental organization supported the proposed rule. All other States and most non-governmental organizations opposed the establishment of any ''declaration criteria'' in regulation on the grounds that it limits presidential discretion. Several commented that they prefer the current declaration process because it provides the appropriate level of executive discretion and flexibility for the President and for Governors. We do not agree with the perception that the rule limits presidential discretion. First, the rule clearly states that it would not affect presidential discretion. In fact, the rule specifically states that these evaluation factors are used to make a *recommendation* to the President in recognition of the fact that it is the President, not FEMA, who determines whether a major disaster declaration is warranted. Secondly, the rule generally mirrors the process that we currently use in evaluating a Governor's request. It does not change regulations and policies established under the Stafford Act.

Several commentors approved the concept of publishing the evaluation factors but criticized them for being too vague and subjective. Conversely, some criticized the evaluation factors for being too stringent and inflexible. A number of commentors criticized specific evaluation factors. Saying, for example, that they do not adequately measure State capability or commitment to hazard mitigation. However, commentors as a whole offered no specific or consistently agreed-upon alternatives to the evaluation factors that we proposed. With respect to the lack of specificity in some of the evaluation factors, we are purposely general because we look at the collective impact of all of the factors when making a recommendation to the President. Our goal is to provide consistency in the evaluation process and in the types of factors that we consider, while at the same time allowing us to consider the total impact and unique circumstances of a disaster within a particular State. If further specificity or elaboration is needed on individual factors, such as how we might measure the impact of hazard mitigation on the disaster, or how we would measure the impact of recent disasters, we believe that such detail would be more appropriate in policy than in regulation.

The factor that received the greatest number of comments is the use of $1.00 per capita as an indicator for Public Assistance; the use of a minimum $1 million dollar threshold for this indicator; and, the intent to begin adjusting this indicator annually for inflation using the Consumer Price Index. Some felt that this indicator does not really provide the best measurement of the size disaster that a State should be expected to manage without Federal assistance. Several commentors objected to this factor because they did not feel that it adequately addressed localized impacts or unique circumstances of a disaster. We recognize that a straight per capita figure may not be the best measurement of a State's capability, but it does provide a simple, clear, consistent and long-standing means of evaluating the size of a disaster relative to the size of the State. We also believe that it is time to begin to peg this indicator to inflation since it has been in use without change for the past fifteen years. One commentor felt that we should adjust the $1 per capita figure now from 1985 to 1999 dollars, but we chose to begin adjusting from this rule forward. Several commentors noted that the addition of a $1 million minimum indicator for States that are under one million in population is a change to current practice. No States or territories affected by this provision commented on it. We continue to maintain that even the lowest population States can reasonably be expected to cover this level of public assistance damage and have made no change in the rule.

Several commentors objected to using $1 per capita as a statewide indicator rather than a localized indicator. This statewide indicator is not the sole factor that we use in recommending a major disaster. In fact, one of the evaluation factors specifically addresses impacts at the local level as well as specific types of impacts, such as damage to critical facilities. The proposed rule labels this factor ''Impacts at the County Level.'' We have renamed this to be ''Localized Impacts'' to make it clear that we look at the impacts for other units of government, not just the county. The history of major disaster declarations clearly demonstrates that the statewide $1 per capita indicator is not the sole determinant in recommending or granting declarations. Rather, we look at all of them in concert to determine whether a declaration should be recommended. For this reason we do not believe that use of this factor is in conflict with § 320 of the Stafford Act regarding arithmetic formulas or sliding scales.

One Tribal organization commented that the rule does not address how Tribal governments fit within the declaration process. By law, only the Governor can request a major disaster declaration under the Stafford Act. We then evaluate the impacts at the State and local level. While the proposed rule did not mention Tribal governments specifically, we do, and will continue to, evaluate impacts at the Tribal level

just as we would evaluate localized impacts at the county or other government level. We revised the rule to add a reference to Tribal governments under both the Public Assistance and Individual Assistance evaluation factors so that this is clear.

A number of commentors felt that the evaluation factors should be more rigorous so that we can ensure that Federal disaster assistance is truly supplemental in nature to State and local assistance. Along those lines, several noted that the evaluation factors should consider and/or encourage State ''Trust Funds'' for disaster assistance. While we do not specifically mention trust funds we do encourage States to develop their own programs of disaster assistance. If a State were inclined to develop its own programs, the statewide $1 per capita indicator under the Public Assistance Program and the average amounts of assistance shown under the Individual Assistance Program could serve as targets for sizing State programs of assistance.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. We have not prepared an environmental assessment.

Executive Order 12866, Regulatory Planning and Review

This rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The rule has not been reviewed by the Office of Management and Budget under E.O. 12866.

Paperwork Reduction Act

This rule does not contain a collection of information and therefore is not subject to the provisions of the Paperwork Reduction Act of 1995.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under E.O. 12612, Federalism, dated October 16, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of E.O. 12778.

Congressional Review of Agency Rulemaking

We have submitted this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104–121. The rule is not a ''major rule'' within the meaning of that Act. It is an administrative action in support of normal day-to-day activities. It does not result in nor is it likely to result in an annual effect on the economy of $100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

This final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, and (2) from the Paperwork Reduction Act. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4. It does not meet the $100,000,000 threshold of that Act, and any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Disaster assistance, Intergovernmental relations, Reporting and recordkeeping requirements.

Accordingly, we amend 44 CFR part 206 as follows:

PART 206—[AMENDED]

1. The authority citation for part 206 continues to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. We are adding § 206.48 to read as follows.

§ 206.48 Factors considered when evaluating a Governor's request for a major disaster declaration.

When we review a Governor's request for major disaster assistance under the Stafford Act, these are the primary factors in making a recommendation to the President whether assistance is warranted. We consider other relevant information as well.

(a) *Public Assistance Program.* We evaluate the following factors to evaluate the need for assistance under the Public Assistance Program.

(1) *Estimated cost of the assistance.* We evaluate the estimated cost of Federal and nonfederal public assistance against the statewide population to give some measure of the per capita impact within the State. We use a figure of $1 per capita as an indicator that the disaster is of such size that it might warrant Federal assistance, and adjust this figure annually based on the Consumer Price Index for all Urban Consumers. We are establishing a minimum threshold of $1 million in public assistance damages per disaster in the belief that we can reasonably expect even the lowest population States to cover this level of public assistance damage.

(2) *Localized impacts.* We evaluate the impact of the disaster at the county and local government level, as well as impacts at the American Indian and Alaskan Native Tribal Government levels, because at times there are extraordinary concentrations of damages that might warrant Federal assistance even if the statewide per capita is not met. This is particularly true where critical facilities are involved or where localized per capita impacts might be extremely high. For example, we have at times seen localized damages in the tens or even hundreds of dollars per capita though the statewide per capita impact was low.

(3) *Insurance coverage in force.* We consider the amount of insurance coverage that is in force or should have been in force as required by law and regulation at the time of the disaster, and reduce the amount of anticipated assistance by that amount.

(4) *Hazard mitigation.* To recognize and encourage mitigation, we consider the extent to which State and local government measures contributed to the reduction of disaster damages for the disaster under consideration. For example, if a State can demonstrate in its disaster request that a Statewide building code or other mitigation measures are likely to have reduced the damages from a particular disaster, we consider that in the evaluation of the request. This could be especially significant in those disasters where, because of mitigation, the estimated public assistance damages fell below the per capita indicator.

(5) *Recent multiple disasters.* We look at the disaster history within the last twelve-month period to evaluate better the overall impact on the State or locality. We consider declarations under the Stafford Act as well as declarations by the Governor and the extent to which the State has spent its own funds.

(6) *Programs of other Federal assistance.* We also consider programs of other Federal agencies because at times their programs of assistance might more appropriately meet the needs created by the disaster.

(b) *Factors for the Individual Assistance Program.* We consider the following factors to measure the severity, magnitude and impact of the disaster and to evaluate the need for assistance to individuals under the Stafford Act.

(1) *Concentration of damages.* We evaluate the concentrations of damages to individuals. High concentrations of damages generally indicate a greater need for Federal assistance than widespread and scattered damages throughout a State.

(2) *Trauma.* We consider the degree of trauma to a State and to communities. Some of the conditions that might cause trauma are:

(i) Large numbers of injuries and deaths;

(ii) Large scale disruption of normal community functions and services; and

(iii) Emergency needs such as extended or widespread loss of power or water.

(3) *Special populations.* We consider whether special populations, such as low-income, the elderly, or the unemployed are affected, and whether they may have a greater need for assistance. We also consider the effect on American Indian and Alaskan Native Tribal populations in the event that there are any unique needs for people in these governmental entities.

(4) *Voluntary agency assistance.* We consider the extent to which voluntary agencies and State or local programs can meet the needs of the disaster victims.

(5) *Insurance.* We consider the amount of insurance coverage because, by law, Federal disaster assistance cannot duplicate insurance coverage.

(6) *Average amount of individual assistance by State.* There is *no set threshold* for recommending Individual Assistance, but the following averages may prove useful to States and voluntary agencies as they develop plans and programs to meet the needs of disaster victims.

AVERAGE AMOUNT OF ASSISTANCE PER DISASTER

[July 1994 to July 1999]

	Small states (under 2 million pop.)	Medium states (2–10 million pop.)	Large states (over 10 million pop.)
Average Population (1990 census data)	1,000,057	4,713,548	15,522,791
Number of Disaster Housing Applications Approved	1,507	2,747	4,679
Number of Homes Estimated Major Damage/Destroyed	173	582	801
Dollar Amount of Housing Assistance	$2.8 million	$4.6 million	$9.5 million
Number of Individual and Family Grant Applications Approved	495	1,377	2,071
Dollar Amount of Individual and Family Grant Assistance	1.1 million	2.9 million	4.6 million
Disaster Housing/IFG Combined Assistance	3.9 million	7.5 million	14.1 million

Note: The high 3 and low 3 disasters, based on Disaster Housing Applications, are not considered in the averages. Number of Damaged/Destroyed Homes is estimated based on the number of owner-occupants who qualify for Eligible Emergency Rental Resources. Data source is FEMA's National Processing Service Centers. Data are only available from July 1994 to the present.

Small Size States (under 2 million population, listed in order of 1990 population): Wyoming, Alaska, Vermont, District of Columbia, North Dakota, Delaware, South Dakota, Montana, Rhode Island, Idaho, Hawaii, New Hampshire, Nevada, Maine, New Mexico, Nebraska, Utah, West Virginia. U.S. Virgin Islands and all Pacific Island dependencies.

Medium Size States (2–10 million population, listed in order of 1990 population): Arkansas, Kansas, Mississippi, Iowa, Oregon, Oklahoma, Connecticut, Colorado, South Carolina, Arizona, Kentucky, Alabama, Louisiana, Minnesota, Maryland, Washington, Tennessee, Wisconsin, Missouri, Indiana, Massachusetts, Virginia, Georgia, North Carolina, New Jersey, Michigan. Puerto Rico.

Large Size States (over 10 million population, listed in order of 1990 population): Ohio, Illinois, Pennsylvania, Florida, Texas, New York, California.

Dated: August 24, 1999.

James L. Witt,

Director.

[FR Doc. 99–22510 Filed 8–31–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[IB Docket No. 96–261; FCC 99–124]

International Settlement Rates, Report and Order on Reconsideration and Order Lifting Stay

AGENCY: Federal Communications Commission.

ACTION: Final rule; reconsideration.

SUMMARY: This document affirms a previous finding that the Commission has authority under the Communications Act to establish settlement rate benchmarks and to require U.S. carriers to negotiate settlement rates that comply with those benchmarks. In addition, the Commission amended the Section 214 condition for facilities-based service to affiliated markets, so that it applies only to U.S. affiliates of carriers that have market power in the destination country. The Commission took this action in response to petitions for reconsideration filed in this proceeding.

DATES: Effective October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Lisa Choi, Telecommunications Division, International Bureau, (202) 418–1480.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order on Reconsideration and Order Lifting Stay, FCC 99–124, adopted on May 28, 1999, and released on June 11, 1999. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Room (Room CY–A257) of the Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554. The document is also available for download over the internet at *http://www.fcc.gov/bureaus/international/orders/1999/fcc99124.wp*. The complete text of this Order also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800.

Summary of Report and Order on Reconsideration and Order Lifting Stay

1. In the *Benchmarks Order* (62 FR 45758, August 29, 1997), the Commission established benchmarks that govern the international settlement rates that U.S. carriers may pay foreign carriers to terminate international traffic originating in the United States. In the Final Rule on reconsideration, the Commission upheld its *Benchmarks Order* with one modification.

2. In the *Benchmarks Order*, the Commission calculated the benchmark rates using foreign carriers' publicly available tariff rates and information published by the International Telecommunication Union (ITU). The Commission developed a methodology for calculating the benchmarks called the ''tariffed component price'' (TCP) methodology. It grouped countries by their level of economic development, using a World Bank and ITU classification scheme, and calculated benchmarks using the TCP methodology for each category. The benchmarks are: 15¢ for upper income countries; 19¢ for upper-middle and lower-middle income countries; and 23¢ for lower income countries.

3. The Commission established a transition schedule for U.S. carriers to negotiate settlement rates that comply with the benchmarks. The transition schedule is also based on level of economic development, with an additional category for countries with very low levels of telecommunications network development. Under the transition schedule, U.S. carriers are required to negotiate settlement rates that comply with the benchmarks according to the following schedule: one year from implementation of the *Benchmarks Order* for carriers in upper income countries; two years for carriers in upper-middle income countries; three years for carriers in lower-middle income countries; four years for carriers in lower income countries; and five years for carriers in countries with teledensity (lines per 100 inhabitants) less than one.

4. The Philippines Parties, AT&T, and MCI filed petitions requesting reconsideration or clarification of various aspects of the *Benchmarks Order*. The Philippines Parties asserted that the benchmark rules violate the Due Process Clause of the Fifth Amendment and that the Commission does not have jurisdiction to adopt benchmark rates. In the Final Order on Reconsideration, the Commission affirmed its conclusion in the *Benchmarks Order* that it has jurisdiction to adopt settlement rate benchmarks under the Communications Act and relevant case law. The Commission determined that above-cost settlement rates paid by U.S. carriers to terminate international traffic are neither just nor reasonable, and it acted pursuant to its statutory authority in Section 201(b) of the Communications Act to prohibit U.S. carriers from continuing to pay such charges. The Commission also concluded that its benchmarks are consistent with international obligations of the United States.

5. In the final order on reconsideration, the Commission disagreed with the Philippines Parties and found that the complaint procedures satisfy whatever process rights a foreign correspondent may have by affording them an opportunity to participate in the proceedings.

6. The Commission adopted two authorization conditions in the *Benchmarks Order*, one that applies to authorizations to provide facilities-based service to affiliated markets and one that applies to all authorizations to provide switched services over facilities-based or resold international private lines. These two authorization conditions are intended to address different competitive concerns.

7. The condition for facilities-based service to affiliated markets addresses the potential for a carrier to engage in a predatory price squeeze, *i.e.*, to price below the level of its imputed costs when providing service from the United States to a foreign market where it has an affiliate. In the *Benchmarks Order*, the Commission found that a U.S.-licensed carrier has both the ability and incentive to engage in a price squeeze when it provides facilities-based service to a market in which its affiliated foreign carrier provides the terminating service and collects above-cost settlement rates. The Commission's facilities-based condition addresses the concern about price squeeze behavior by requiring that a carrier's settlement rates be at or below the relevant benchmark before its U.S.-licensed affiliate may provide facilities-based service on the affiliated route. This condition substantially reduces the above-cost settlement rates that could be used to execute a price squeeze on affiliated routes. However, the Commission recognized in the *Benchmarks Order* that the facilities-based condition does not completely eliminate the incentives or the ability of a carrier to execute a price squeeze because the settlement rate benchmarks are still above-cost. The Commission therefore decided that it will take enforcement action if, after the U.S.-licensed carrier has commenced service to the affiliated market, the Commission discovers that the carrier has attempted to execute a predatory price squeeze or engaged in other anticompetitive behavior that distorts market performance. That action may include a requirement that the foreign affiliate reduce its settlement rate for the route to a level at or below the best practices rate the Commission adopted in the *Benchmarks Order*, 8 cents, or a revocation of the U.S.-licensed carrier's authorization to serve the affiliated market. The Commission adopted a rebuttable presumption that a carrier has distorted market performance if any of the carrier's tariffed collection rates on the affiliated route are less than the carrier's average variable costs on that route. For purposes of this presumption, the Commission adopted a proxy for average variable costs that is equal to the carrier's net settlement rate plus any originating access charges.

8. The Commission decided in the *Benchmarks Order* to apply the facilities-based condition to existing Section 214 authorization holders that serve affiliated markets (*i.e.*, those that were authorized to provide service prior to the January 1, 1998 effective date of the *Benchmarks Order*). The Commission required that existing authorization holders comply with the condition by having their foreign affiliates negotiate with U.S. international carriers a settlement rate for affiliated routes that complies with the appropriate benchmark and is in effect within ninety days of the January 1, 1998 effective date. The Commission, subsequently, issued a temporary stay of the effectiveness of the condition for facilities-based service to affiliated markets as it applies to existing Section 214 authorization holders in a March 30, 1998 Stay Order pending action on reconsideration.

9. The condition for provision of switched services over private lines, also known as ISR, addresses the potential for ''one-way bypass'' of the settlements system to occur. To address the concern about one-way bypass, the Commission adopted an authorization condition that requires that at least 50 percent of the traffic on a route be settled at rates at or below the appropriate benchmark level before carriers may provide switched services over private lines. The Commission reasoned that, if settlement rates are closer to cost, the impact of one-way bypass on the level of U.S. settlement payments will be diminished. As with the condition for facilities-based service to affiliated markets, the Commission recognized that the condition for provision of switched services over

private lines does not completely eliminate the potential for one-way bypass to occur. The Commission, therefore, decided that it will take enforcement action if the Commission learns that one-way bypass has occurred. That enforcement action may include a requirement that carriers be prohibited from using their authorizations to provide switched services over private lines on a given route until settlement rates for at least half of the traffic on that route are at or below the best practice rate of 8 cents. It could also include a revocation of carriers' authorizations. The Commission adopted a test for determining when one-way bypass has occurred. Pursuant to that test, the Commission will presume that one-way bypass has occurred if the ratio of outbound to inbound settled traffic increases more than 10 percent in two successive quarterly traffic measurement periods.

10. In the Order on Reconsideration, the Commission declined to modify the benchmark conditions to require compliance with the best practice rate rather than the benchmark rates, as AT&T requested. The Commission concluded that the combination of this requirement and the tests to detect one-way bypass and price squeeze behavior is sufficient to prevent anticompetitive distortions in the U.S. market. The Commission also declined to revise the proxy for average variable costs for purposes of the Commission's test to detect price squeeze behavior. The Commission concluded that the more complex test AT&T urged it to adopt is not necessary for purposes of the test. The Commission's intent was to adopt a ''bright line'' test with a proxy for average variable costs that would allow either the Commission or other interested parties to identify readily whether a carrier is pricing its services at a predatory level. The Commission thus adopted a proxy for average variable costs that is based on publicly available data. The data necessary to calculate a U.S. carrier's net settlement rate are included in carrier's quarterly traffic reports and information on U.S. carrier's access charges is available in tariffs filed with the Commission and in the Commission's annual Monitoring Report. In contrast, the data necessary to identify all possible average variable costs will be in the hands of the carrier whose prices are at issue. Including all variable costs in the test, as AT&T requested, would defeat the purpose of applying a bright line test.

11. In response to a petition by MCI, the Commission is persuaded that it should modify the condition for facilities-based service to affiliated markets to apply solely to U.S. carriers that are providing service on a route where they have an affiliate with market power. Upon review of the record, the Commission concluded that there is not a substantial threat of price squeeze behavior by an integrated carrier that lacks market power in the foreign market. As a result, the Commission will apply the condition for facilities-based service to affiliated markets solely to carriers that are providing service on a route where they have a foreign affiliate with market power.

12. Given the decision to apply the condition for facilities based service to affiliate markets solely to carriers that are providing service on a route where they have an affiliate with market power, the Commission also decided to include the condition in the section of the Commission's rules that contains the dominant carrier safeguards, § 63.10. In the *Foreign Participation Order*, the Commission concluded that it would streamline the Section 214 application of any applicant not otherwise eligible for streamlined processing so long as the applicant's affiliate is a foreign carrier in a WTO Member country and the applicant certifies that it will comply with the Commission's dominant carrier regulations. By our action in this Order, those regulations now include the condition for facilities-based service to affiliated markets.

13. For purposes of determining which carriers must comply with the condition, for facilities-based service to affiliated markets, the Commission will apply the rebuttable presumption the Commission adopted in our Foreign *Participation Order* that foreign carriers with less than 50 percent market share in each relevant market on the foreign end lack sufficient market power to affect competition adversely in the U.S. market. For purposes of the condition for facilities-based service to an affiliated market, the relevant market is international transport and facilities, including cable landing station access and backhaul facilities.

14. The Commission also lifted its stay of the effectiveness of the condition for facilities-based service to affiliated markets as it applies to Section 214 authorization holders that were authorized to provide service prior to January 1, 1998. Pursuant to the *Benchmarks Order*, existing Section 214 authorization holders that serve affiliated markets would have been required to negotiate with U.S. international carriers a settlement rate for affiliated routes that complies with the appropriate benchmark within ninety days of January 1, 1998, if the Commission had not issued the Stay Order. In accordance with the Order on Reconsideration, only Section 214 authorization holders that are affiliated with a carrier that has market power in the foreign market must comply with the condition for facilities-based service to affiliated markets. The Commission will require such existing Section 214 authorization holders to negotiate with U.S. international carriers a rate for terminating traffic for affiliated routes that complies with the appropriate benchmark and is in effect within thirty days of the effective date of the final rule on reconsideration.

Supplemental Final Regulatory Flexibility Analysis

15. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was included in the Notice in IB Docket No. 96–261 (61 FR 68702 (December 30, 1996), and a Final Regulatory Flexibility Analysis (FRFA) was included in the *Benchmarks Order*. As required by the RFA, the Commission includes the FRFA contained in the *Benchmarks Order* as the Supplemental FRFA for this document. The Commission released a public notice announcing that the Supplemental FRFA is available to the public (see Public Notice, DA 99–1655, released, August 18, 1999).

Ordering Clauses

16. Accordingly, *it is ordered*, pursuant to Sections 1, 2, 4(i), 5(c), 201, 211, 214 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 155(c)(5), 201, 211, 214, and 303(r), and § 1.106 of the Commission's Rules, 47 CFR Part 1.106, that the AT&T Petition for Partial Reconsideration and the Petition for Reconsideration of the Philippines Parties are denied.

17. *It is further ordered* that the MCI Telecommunication Corp. Petition for Clarification or Reconsideration is granted in part and *denied* in part.

18. *It is further ordered*, pursuant to Sections 1 and 4(i) of the Communications Act, 47 U.S.C. 151 and 154(i), that the stay of the effectiveness of the condition for facilities-based service to affiliated markets as it applies to Section 214 authorization holders that were authorized to provide service prior to January 1, 1998, is *lifted*.

19. *It is further ordered*, pursuant to Sections 1, 2, 4(i), 5(c)(5), 201, 211, 214 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 155(c)(5), 201, 211, 214, and 303(r), that Part 63 of the Commission's rules, 47 CFR Part 63, *is amended* as set forth in the rule changes.

List of Subjects in 47 CFR Part 63

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 63 as follows:

PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

1. The authority citation for Part 63 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 160, 161, 201–205, 218, 403, 533 unless otherwise noted.

2. Section 63.10 is amended by adding paragraphs (c)(6) and (e) to read as follows:

§ 63.10 Regulatory classification of U.S. international carriers.

* * * * *

(c)(6) If authorized to provide facilities-based service, comply with paragraph (e) of this section.

* * *

(e) Except as otherwise ordered by the Commission, a carrier that is classified as dominant under this section for the provision of facilities-based services on a particular route and that is affiliated with a carrier that collects settlement payments for terminating U.S. international switched traffic at the foreign end of that route may not provide facilities-based service on that route unless the current rates the affiliate charges U.S. international carriers to terminate traffic are at or below the Commission's relevant benchmark adopted in IB Docket No. 96–261. *See* FCC 97–280 (12 FCC Rcd 19806 (1997) (62 FR 45758, August 29, 1997)), (available at the FCC's Reference Operations Division, Washington, D.C. 20554, and on the FCC's World Wide Web Site at http://www.fcc.gov).

[FR Doc. 99–22722 Filed 8–31–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 87–268; FCC 98–315]

Advanced Television Systems and Their Impact Upon the Existing Television Service

AGENCY: Federal Communications Commission.

ACTION: Final rule, correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of January 28, 1999 (64 FR 4322), a *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders* (*Second MO&O*) in this proceeding that revised and clarified certain aspects of the Commission's policies relating to digital television (DTV) service in response to requests from petitioners. The amended rules in that decision inadvertently removed a portion of § 73.622(e) of the rules. This notice restores the text that was removed from § 73.622. This notice also changes the FCC address in that section to reflect the recent relocation of the agency's headquarters office.

DATES: Effective October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell (202–418–2470), Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders* in MM Docket No. 87–268, FCC 98–315, on January 28, 1999 (64 FR 4322). The *Second MO&O* revised and clarified certain aspects of the Commission's policies relating to channel allotments for digital television (DTV) service in response to requests from petitioners. This notice restores portions of § 73.622(e) of the Commission's rules that were inadvertently removed in the *Second MO&O*. This notice also changes the FCC address in that section to reflect the recent relocation of the agency's headquarters office.

In rule FR Doc. 99–1941 published on January 28, 1999 make the following corrections:

1. On page 4327, in the first column, § 73.622 is amended by revising paragraph (e) to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(e) *DTV Service Areas.* (1) The service area of a DTV station is the geographic area within the station's noise-limited F(50,90) contour where its signal strength is predicted to exceed the noise-limited service level. The noise-limited contour is the area in which the predicted F(50,90) field strength of the station's signal, in dB above 1 microvolt per meter (dBu) as determined using the method in section 73.625(b) exceeds the following levels (these are the levels at which reception of DTV service is limited by noise):

	dBu
Channels 2–6	28
Channels 7–13	36
Channels 14–69	41

(2) Within this contour, service is considered available at locations where the station's signal strength, as predicted using the terrain dependent Longley-Rice point-to-point propagation model, exceeds the levels above. Guidance for evaluating coverage areas using the Longley-Rice methodology is provided in *OET Bulletin No. 69*. Copies of *OET Bulletin No. 69* may be inspected during normal business hours at the Federal Communications Commission, 445 12th Street, S.W, Dockets Branch (Room CY A–257), Washington, DC 20554. This document is also available through the Internet on the *FCC Home Page* at http://www.fcc.gov.

Note to paragraph (e)(2): During the transition, in cases where the assigned power of a UHF DTV station in the initial DTV Table is 1000 kW, the Grade B contour of the associated analog television station, as authorized on April 3, 1997, shall be used instead of the noise-limited contour of the DTV station in determining the DTV station's service area. In such cases, the DTV service area is the geographic area within the station's analog Grade B contour where its DTV signal strength is predicted to exceed the noise-limited service level, *i.e.*, 41 dB, as determined using the Longley-Rice methodology.

(3) For purposes of determining whether interference is caused to a DTV station's service area, the maximum technical facilities, *i.e.*, antenna height above average terrain (antenna HAAT) and effective radiated power (ERP), specified for the station's allotment are to be used in determining its service area.

* * * * *

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–22502 Filed 8–31–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. FHWA–97–3201]

RIN 2125–AE15

Parts and Accessories Necessary for Safe Operation; Rear Impact Guards and Rear Impact Protection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending the Federal Motor Carrier Safety Regulations (FMCSRs) to require that certain trailers and semitrailers with a gross vehicle weight rating (GVWR) of 4,536 kilograms (kg) (10,000 pounds) or more, and manufactured on or after January 26, 1998, be equipped with rear impact guards that meet the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 223. The rear impact guards must be installed to ensure that the trailer or semitrailer meets the rear impact protection requirements of FMVSS No. 224. This rulemaking is intended to ensure that the rear impact protection requirements of the FMCSRs are consistent with the FMVSSs and to improve the safety of operation of commercial motor vehicles (CMVs) by reducing the incidence of passenger compartment intrusion during underride accidents in which the passenger vehicle strikes the rear of the trailer. With regard to trailers and semitrailers manufactured before January 26, 1998, motor carriers are not required to retrofit a rear impact guard that conforms to FMVSS No. 223. However, motor carriers operating these trailers and semitrailers are required to continue complying with the FHWA's requirements for rear end protection on CMVs that are not covered by FMVSSs Nos. 223 and 224.

EFFECTIVE DATE: This rule is effective on October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, (202) 366–4009, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's (GPO) Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the GPO's web page at *http://www.access.gpo.gov/nara* and the Office of the Federal Register's home page at *http://www.nara.gov/fedreg*.

Background

On January 24, 1996 (61 FR 2003), the National Highway Traffic Safety Administration (NHTSA) published a final rule creating FMVSSs Nos. 223, Rear Impact Guards, and 224, Rear Impact Protection. The requirements apply to trailers and semitrailers manufactured on or after January 26, 1998.

The first standard, FMVSS No. 223 (49 CFR 571.223), specifies performance requirements that rear impact guards must meet before they can be installed on new trailers and semitrailers. It specifies strength and energy absorption requirements for the impact guards as well as test procedures that manufacturers and the NHTSA will use to determine compliance with the standard. The standard also requires the guard manufacturer to permanently label the impact guard to certify that the device meets the requirements and to provide instructions on the proper installation of the guard.

The second standard, FMVSS No. 224 (49 CFR 571.224), requires that most new trailers and semitrailers with a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 pounds) or more be equipped with a rear impact guard meeting FMVSS No. 223. Requirements for the location of the guard relative to the rear end and sides of the trailer are also specified in the vehicle standard. In addition, the vehicle standard requires that the guard be mounted on the trailer or semitrailer in accordance with the instructions of the guard manufacturer.

On January 26, 1998, the NHTSA issued a final rule responding to petitions for reconsideration of the 1996 final rule, and making technical amendments to the rear impact guard requirements (63 FR 3654). The 1998 final rule clarified the applicability of the energy-absorption requirements with regard to cargo tank motor vehicles, as defined in 49 CFR 171.8, excluded pulpwood trailers from the rear impact protection requirements (a definition of pulpwood trailer was added to § 571.224), and revised the definition of special purpose vehicle.

On May 14, 1998, the FHWA proposed amending § 393.86 to ensure that the rear impact protection requirements of the FMCSRs are consistent with the FMVSSs and to improve the safety of operation of CMVs by reducing the incidence of passenger compartment intrusion during underride accidents in which the passenger vehicle strikes the rear of the trailer (63 FR 26759). The agency indicated that this action is necessary because the FMVSSs are applicable only to vehicle and vehicle component manufacturers. In the absence of an amendment to the FMCSRs, there would be no Federal requirement that motor carriers maintain their trailers to conform to the rear impact protection requirements of FMVSS No. 224, or repair damaged rear impact guards. Motor carriers could also replace rear impact guards with devices that failed to comply with the NHTSA requirements.

Discussion of Comments to the NPRM

The FHWA received 5 comments in response to the notice of proposed rulemaking (NPRM). The commenters were: the Advocates for Highway and Auto Safety (Advocates); the American Trucking Associations (ATA); the Insurance Institute for Highway Safety (IIHS); the National Automobile Dealers Association, American Truck Dealers Division (NADA); and, Torcomian Industries, Inc.

All of the commenters supported the rulemaking. However, the ATA requested changes to certain portions of the regulatory language.

General Comments

The Advocates stated:

> This initiative to parallel the current NHTSA standard with an in-service [requirement] for motor carrier operations clearly will enhance safety. We especially commend the agency for proposing the additional benefits of public safety gained by requiring foreign carriers to abide by the same safety standards as domestic carriers. Given the prospective increases in trilateral freight movements because of the North American Free Trade Agreement, this action appropriately anticipates and counters a potentially serious threat to highway safety from numerous new trailers/semi-trailers being operated on U.S. highways by Canadian and Mexican carriers. This proposal is a textbook example of an agency acting in the public interest and it should be adopted.

The IIHS stated:

The operational requirements for commercial motor vehicles should conform to the [F]ederal safety standards applicable to new vehicles. Interagency cooperation and consistency are particularly important for vehicle safety systems such as underride guards. Properly functioning underride guards on trailers will reduce occupant compartment intrusion in passenger vehicles striking trailers from the rear and thus reduce deaths and injuries.

Comments About the Proposed Regulatory Language

The ATA believes the proposed language requiring rear impact guards to be no more than 22 inches above the ground at any point across the horizontal member is too strict a requirement for motor carriers. The proposed requirement fails to take into account minor damage that may occur to the impact guard in motor carrier operations.

The ATA stated:

An ATA survey conducted earlier this year of guards built to the Truck Trailer Manufacturers Association (TTMA) Recommended Practice—which is dimensionally identical to FMVSS 224—found that only 8.6 percent contained noticeable damage. Further, only 3.5 percent of the guards suffered harm that would raise their height. It typically occurred at a point near their center and consisted of an upward ''vee-shaped'' bend.

These narrow bends ranged up to three inches high. They typically originate from complications caused by malfunctioning dock locking mechanisms. Dock locks are devices found at shipper facilities. They lock onto the underride guard and hold trailers during loading or unloading to prevent an unexpected roll-away. Upward, center bending of underride guards occurs when the dock lock does not completely retract and a spotting tractor moves the trailer. These tractors use a hydraulic fifth wheel to lift the front of a trailer, freeing the driver from having to retract its landing gear before moving it. Much like a teeter-totter, raising the front of a trailer lowers the rear. This drives the underride guard into the top of the dock lock, causing the bending.

ATA and one of its affiliated organizations—The Maintenance Council (TMC), which consists of thousands of truck equipment professionals—explored the consequences of such damage with trailer manufacturers. We found that the degree of bending which typically occurs does not impair the guard's capability to fulfill the requirements of FMVSS 223.

The ATA also requested that the FHWA revise the proposed definitions of ''low chassis vehicles,'' ''special purpose vehicles,'' and ''wheels back vehicles'' to cover any type of motor vehicle. The ATA believes this is necessary to retain exemptions currently provided for several types of straight trucks. The ATA recommends replacing ''trailer or semitrailer'' with ''a motor vehicle.''

Comments About Retrofitting

The ATA, Torcomian Industries, and the NADA responded to the FHWA's request for comments on whether the agency should consider a retrofitting requirement for trailers and semitrailers manufactured before January 26, 1998. The ATA believes retrofitting trailers with new rear impact guards would be impractical and cost prohibitive, without contributing anything to safety. The ATA stated:

Retrofitting would be impractical because trailer manufacturers design the guard and the rear of the trailer to act in combination to meet the energy absorption requirements of FMVSS 223. Therefore, attaching a new rear underride guard to an older trailer might be a recipe for disaster. Older trailers may not have an attaching understructure to accommodate the new equipment, and may not function as expected.

In addition, truck operators would have no way of knowing if new guards fitted to older trailers would meet the new standards.

The cost of fitting a new guard to a new trailer—with no unexpected complications—is $300. Since there are approximately 3 million trailers in service, the direct cost of retrofit would exceed $900 million. Adding in the indirect cost of revenue lost due to down time and the complications of retrofitting old trailers not designed to meet FMVSS 224, the total balloons to over $1 billion.

The NADA suggests that the FHWA ''continue to examine both the costs and benefits associated with applying these new standards retroactively, as well as any technical constraints that may be involved.''

Torcomian Industries stated:

[Our] position is why not have all vehicles, regardless of year of manufacture or design, come up to standards. The technology is here, now * * * an ideal method of providing vehicles with underride guards.

The transportation industry needs an underride bumper that will bridge all of the various configurations in today's vehicles, therefore removing any objections from the end users.

Torcomian Industries believes that establishing specific standards of performance for underride bumpers by application is important to help the [original equipment manufacturer] and fleet service facilities customers better to determine how Torcomian Industries Articulating Patented Underride Bumper Guard can help reduce operating costs.

Torcomian Industries believes its articulating rear impact guard can be ''easily retrofitted to all existing vehicles, whether semi-trailer or straight truck.''

FHWA Response to Comments

The FHWA agrees with the ATA's comments about the need to revise certain portions of the regulatory text. The agency believes it is important to maintain the spirit and intent of § 393.86(e) of the FHWA's current requirements which states ''[m]otor vehicles constructed and maintained so that the body, chassis, or other parts of the vehicle afford the rear end protection contemplated shall be deemed to be in compliance with this section.'' The FHWA has revised the proposed definitions of ''low chassis vehicles,'' ''special purpose vehicles,'' and ''wheels back vehicles'' to make them applicable to single-unit trucks. This action will help to make the FHWA's requirements for single unit trucks, and trailers and semitrailers manufactured prior to January 26, 1998, easier to understand, use and enforce.

The FHWA notes that there is a difference between the agency's special purpose vehicle exception for single-unit trucks, and semitrailers and trailers manufactured before January 26, 1998, and the NHTSA's special purpose vehicle exclusion. The FHWA's exception requires that the work-performing equipment provide some level of protection against underride. Since the FHWA's rear impact guard requirements for single unit trucks, and semitrailers and trailers manufactured before January 26, 1998, do not include specific performance criteria, the level of protection would have to be comparable to a rear impact guard that is substantially constructed and firmly attached.

By contrast, the NHTSA's special purpose vehicle exclusion is based on the impracticability of installing a rear impact guard to satisfy the requirements of FMVSS Nos. 223 and 224. The work-performing equipment is not required to provide protection against underride.

Although the FHWA agrees with the NHTSA's special purpose vehicle exclusion for new semitrailers and trailers, the FHWA does not believe it is appropriate to provide such a broad exception for single-unit trucks, and semitrailers and trailers built before January 26, 1998. Since the strength and dimensional requirements for the FHWA's requirements for single unit trucks, and semitrailers and trailers not covered by the NHTSA rule, are less stringent than NHTSA's requirements, motor carriers should not experience difficulty achieving compliance. Motor carriers that have maintained their vehicles to comply with the FHWA's requirements in effect prior to the publication of this final rule will not

have to take any actions as a result of this rulemaking.

The FHWA does not agree with the ATA's comment about the need to remove the words ''at any point across the full width of the member.'' The removal of these words would not preclude State officials from citing motor carriers for violating § 393.86 if there is minor damage to the rear impact guard. Since § 393.86 cross-references FMVSS Nos. 223 and 224, State officials can cite the motor carrier for failing to meet the referenced standards if the ground clearance exceeds 22 inches at any point across the full width of the member, irrespective of whether § 393.86 explicitly states ''at any point across the full width of the member.''

The FHWA intends that the rear impact guard requirements be enforced by State officials during roadside inspections and must rely on the enforcement discretion of these officials to determine if the rear impact guard has minor damage, or damage that appears severe enough to adversely affect the ability of the rear impact guard to perform its function. The FHWA did not propose enforcement tolerances and cannot as part of this final rule provide regulatory language to make the distinction between minor damage and more severe damage that would necessitate repairs or replacement of the rear impact guard. The agency believes that penalizing motor carriers for minor damage that would not adversely affect the performance of the rear impact guard serves no practical purpose and discourages States from taking such actions.

With regard to the comments about retrofitting, the FHWA does not intend to propose a retrofitting requirement for improved rear impact protection on trailers and semitrailers manufactured before January 26, 1998. The agency continues to believe there is insufficient accident, cost, and research data to support such a proposal, and that the obstacles to obtaining such data are essentially insurmountable.

The rear impact guard requirements applicable to single-unit trucks, and trailers manufactured prior to January 26, 1998, do not specify minimum strength, or energy absorption capabilities, nor do they prohibit the use of impact guards that have a ground clearance less than 762 mm (30 inches), or are closer than 61 cm (24 inches) to the rear and 45.7 cm (18 inches) to the sides of the vehicle. In addition, the current regulation allows impact guards to be constructed of more than one section provided the lateral distance between the sections does not exceed 610 mm (24 inches). As a result, manufacturers have used a number of rear impact guard designs to satisfy the FHWA's requirements.

To develop a sound technical basis for a retrofitting proposal, the FHWA would have to establish criteria for determining which of the older impact guard designs should be considered acceptable and which ones should be replaced. The FHWA would then have to estimate the total number of guards that would have to be replaced or modified, the per-unit and total cost for replacing or modifying those guards (including lost revenues while the trailer was being retrofitted), and the benefits in lives saved and injuries prevented if a certain number of vehicles were retrofitted. This is particularly difficult because some rear impact guards currently in use may meet or exceed the NHTSA's strength requirements but fail to meet dimensional or energy absorption requirements. Others may meet the dimensional requirements but fall short of the minimum strength requirements.

The FHWA indicated in its NPRM that the agency does not have test data or engineering analyses concerning the performance capabilities of the rear impact guard designs currently in use. The Interstate Commerce Commission (ICC) did not have authority to regulate vehicle and component manufacturers when it issued the first rear underride protection requirements in 1952 and, consequently, had no authority to compel manufacturers to provide technical data on their products. Also, the initial FMVSSs issued by the FHWA (before the NHTSA became a separate agency) did not include rear impact protection requirements. Therefore, the agency did not have access to this information during the relatively short period of time (between 1966 and 1970, when the NHTSA was established) in which vehicle and component manufacturers were regulated by the FHWA. Because of the lack of technical data concerning the performance capabilities of underride devices currently in use, the agency cannot prepare an accurate estimate of the costs and benefits associated with a retrofitting requirement.

The FHWA cannot determine whether the ATA's estimate of more than $1 billion dollars is accurate. However, the agency believes the cost per trailer for retrofitting impact guards is likely to be greater than the cost per trailer for installing rear impact protection on new trailers. Generally, the costs associated with retrofitting components on motor vehicles exceeds the cost of installing those components while the vehicle is being manufactured.

For the purpose of determining a lower bound of a cost range for retrofitting trailers with rear impact guards, the cost estimates provided by the NHTSA in its final rule on rear impact guards and rear impact protection and some of those used by the FHWA in its conspicuity retrofitting rulemaking may be used.

The NHTSA estimates rear impact guards meeting the requirements of FMVSS No. 223 cost approximately $128 to $148 per trailer or semitrailer (61 FR 2004, January 24, 1996). This cost includes an incremental increase (above the cost of current rear impact guards) of between $77 and $96 per guard to satisfy the rear impact guard and rear impact protection requirements.

The FHWA indicated in its NPRM concerning trailer conspicuity that the estimated costs for retrofitting approximately 1.4 million trailers with retroreflective sheeting is $339 million if a two-year phase-in period is allowed (63 FR 33611, June 19, 1998). These figures include an estimate of $144 per trailer for the value of revenues that cannot be generated while the trailer is being retrofitted. It is difficult to estimate the loss in revenues because of the variety of trailer types, the variety of motor carrier operations and the rates that are charged, and the overall manner in which some trailers are used—being left idle at the motor carrier's terminals for periods of time that may be as short as a few hours to several days.

It is acknowledged by most interested parties that the costs for retrofitting a trailer to meet the requirements of FMVSSs Nos. 223 and 224 generally would be greater than the costs of retrofitting a trailer to meet the conspicuity requirements of FMVSS No. 108. At a minimum, the time required to retrofit new underride devices would be greater than that associated with applying retroreflective tape. The result would be significantly higher labor and lost-revenue costs. The lower bound for the cost range of retrofitting would therefore exceed $339 million. This would certainly be the case if more than 1.4 million trailers were required to be retrofitted within a short timeframe.

If, as Torcomian Industries argues, the agency attempted to require retrofitting all CMVs, the lower bound for the cost range would almost certainly exceed $1 billion. The significant increase in the lower bound for the cost range would be due to the large number of single-unit trucks that would be subject to a retrofitting requirement. The number of registered trucks in 1996 (excluding Federal, State, County, and municipal trucks; truck tractors; farm trucks;

pickups; vans; sport utilities; and other light trucks) was 73,983,774, while the number of registered private and commercial trailers and semitrailers was only 4,339, 079.[1] Even if only a fraction of the registered trucks were subject to the FMCSRs—a fraction that cannot be determined accurately—the number of trucks that would have to be retrofitted would greatly exceed the number of trailers.

The FHWA believes it is inappropriate to initiate a retrofitting rulemaking when the data to develop more detailed cost estimates does not exist and cannot be generated without a massive program of economic research.

Discussion of Final Rule

Paragraph (a)(1) of § 393.86 provides a general statement of the applicability of the new rear impact guard requirements and cross references FMVSS Nos. 223 and 224. Paragraph (a)(1) also identifies the types of trailers (which are defined in § 390.5 and § 393.5) that are exempted from the new rear impact guard requirements. Paragraphs (a)(2) through (a)(5) specify the following requirements, respectively: The minimum width for the impact guard; the maximum ground clearance; the maximum distance from the rear of the vehicle to the rear surface of the impact guard; and the cross-sectional vertical height of the horizontal member of the guard. Paragraph (a)(6) specifies the certification and labeling requirements. The agency has included detailed requirements in § 393.86 (a)(2) through (a)(6) to help motor carriers quickly determine if the underride device on a newly manufactured trailer meets the NHTSA's requirements, and to assist State agencies responsible for enforcing motor carrier safety regulations.

The existing requirements (for all CMVs manufactured after December 31, 1952, except trailers or semitrailers manufactured on or after January 26, 1998) are covered under paragraphs (b)(1) through (b)(3). Paragraph (b)(1) specifies the minimum dimensions for the rear impact guard as installed on the motor vehicle. Paragraph (b)(2) requires that the impact guard must be substantially constructed and attached by bolts, welding, or other comparable means. Paragraph (b)(2) differs from the current attachment requirements in that the phrase ''firmly attached'' has been replaced with ''attached by means of bolts, welding, or other comparable means'' to make the regulations easier to understand and enforce.

[1] ''Highway Statistics 1996,'' Federal Highway Administration, November 1997 (FHWA–PL–003).

The current language contained in paragraph (e) has been revised and included in a new paragraph (b)(3). The final rule indicates that low chassis vehicles, special purpose vehicles, and wheels back vehicles which are constructed and maintained so that the body, chassis, or other parts of the vehicle provide rear end protection comparable to an impact guard(s) conforming to the requirements of paragraph (b)(1) of § 393.86 shall be considered in compliance with the requirements.

Applicability to Canadian and Mexican Vehicles

The final rule is applicable to vehicles operated in the United States by Canada- and Mexico-based motor carriers. Although the Federal governments of Canada and Mexico have not indicated whether they intend to require rear impact guards (which meet the NHTSA standard) on newly manufactured trailers operating in their countries, the FHWA believes that it is appropriate to require such guards on foreign-based trailers manufactured on or after the effective date of the NHTSA requirements if those vehicles are operated within the United States.

Commercial motor vehicles operated in the United States by Canada- and Mexico-based motor carriers are currently required to comply with the rear underride device requirements for single-unit trucks, and trailers manufactured before January 26, 1998. The revision of § 393.86 requires that trailers and semitrailers manufactured on or after January 26, 1998, and operated by foreign-based motor carriers meet the NHTSA standards.

Although the FHWA specifically requested comments from Canada- and Mexico-based motor carriers and original equipment manufacturers that sell trailers and semitrailers for the Canadian and Mexican markets, the agency did not receive comments from such parties. The FHWA has received numerous telephone inquiries from Canada-based motor carriers and trailer manufacturers that sell trailers and semitrailers for the Canadian market. The agency advised each caller that foreign motor carriers are currently required to comply with all the requirements of part 393 and that the proposed revision of § 393.86 did not include an exception for foreign-based motor carriers. The agency also advised these companies of the process for submitting comments to the rulemaking docket and, on several occasions, sent via facsimile a copy of the NPRM to Canada-based motor carriers that were unable to access the **Federal Register** via the Internet. The agency believes that ample opportunity has been provided to foreign-based motor carriers to raise any issues which would necessitate consideration of an exception to the requirements of § 393.86 and that it is appropriate to require all motor carriers operating in the United States to comply with this rule.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of Department of Transportation regulatory policies and procedures because of the substantial public interest in the prevention of rear-underride accidents involving CMVs. This rule requires that certain trailers and semitrailers manufactured on or after January 26, 1998, be equipped with rear impact protection devices meeting the requirements of FMVSS No. 223 and installed on trailers in accordance with FMVSS 224. Motor carriers are responsible for maintaining the underride protection devices on these trailers. It is anticipated that the economic impact of this requirement will be minimal because the NHTSA requires trailer manufacturers to equip new trailers and semitrailers with rear impact guards and the FHWA's rulemaking only requires motor carriers to maintain the improved underride protection devices. It is expected that the costs of repairing damaged underride devices will be the only economic burden placed upon motor carriers and that this burden generally will not exceed the costs of properly repairing underride devices on trailers manufactured prior to the effective date of the NHTSA's requirements. Accordingly, further regulatory evaluation is not necessary.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. This rule modifies the rear impact protection standards for trailers in the FMCSRs to make them consistent with the manufacturing standards in the FMVSS No. 224, which requires the installation of rear impact protection devices conforming to FMVSS No. 223 on certain newly-manufactured semitrailers and trailers. The FHWA believes that maintenance costs of the rear impact

protection devices required under the new FMVSSs will be minimal. The maintenance costs only apply to small entities that have trailers that were manufactured on or after January 26, 1998, and are required to be equipped with rear impact guard protection meeting the requirements of FMVSS Nos. 223 and 224.

As of September 1996, the FHWA estimates that there were approximately 382,128 interstate motor carriers. Of these carriers, 136,360 own, term-lease or trip-lease 6 or fewer trailers (68,405 have 1 trailer, 45,770 have 2–3 trailers, and 22,185 have 4–6 trailers). The number of motor carriers that own, term-lease or trip-lease more than 6 trailers, but fewer than 21 is 21,793 (6,658 carriers have 7–8 trailers, 6,197 have 9–11 trailers, 3,887 carriers have 12–14 trailers, 2,779 carriers have 15–17 trailers, and 2,272 carriers have 18–20 trailers). If only those motor carriers that own, term-lease, or trip-lease 20 or fewer trailers are considered small entities, this rulemaking could have an economic impact on up to 158,153 small entities.

The economic impact on each of the motor carriers will vary depending on the number of trailers that the carrier would be responsible for maintaining and the severity of the damage to the rear impact guard. For the most severe level of damage (e.g., damage from a passenger car crashing into the rear of the trailer), the motor carrier would be required to replace the rear impact guard.

The Small Business Administration (SBA), which oversees agencies' compliance with the Regulatory Flexibility Act, has published guidelines to classify small business. The SBA has indicated that for entities engaged in motor freight transportation and warehousing, small businesses are those with $18.5 million or fewer dollars in annual receipts. For a private motor carrier with a principal business other than transportation that operates 20 trailers and has annual receipts of $18.5 million, the total economic impact would most likely be less than one tenth of one percent of the carrier's annual receipts. For example, if all 20 trailers had to have the rear impact guards replaced and the total costs for parts and labor for each trailer reached $1,000, the economic impact would be one tenth of one percent ($20,000/$18.5 million). Although the FHWA does not have documentation concerning the replacement costs for a rear impact guard meeting the requirements of FMVSS Nos. 223 and 224, the agency believes the costs would be less than $1,000.

Based on its analysis of impacts on small entities summarized above, the FHWA believes that this rule will affect a substantial number of small entities, but will not have a significant economic impact on these entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Unfunded Mandates Reform Act

This rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Paperwork Reduction Act

This document does not contain information collection requirements for the purposes of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*].

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 393

Highways and roads, Motor carriers, Motor vehicle equipment, Motor vehicle safety.

Issued on: August 26, 1999.

Gloria J. Jeff,

Federal Highway Deputy Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, chapter III, as follows:

PART 393—[AMENDED]

1. The authority citation for part 393 continues to read as follows:

Authority: Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); 49 U.S.C. 31136 and 31502; 49 CFR 1.48.

2. Section 393.5 is amended by adding the definitions of ''low chassis vehicle,'' ''special purpose vehicle,'' and ''wheels back vehicle,'' and by revising the definitions of ''pulpwood trailer,'' ''rear extremity,'' and ''side extremities'' (now ''side extremity''), placing them in alphabetical order, to read as follows:

§ 393.5 Definitions.

* * * * *

Low chassis vehicle. (1) A trailer or semitrailer manufactured on or after January 26, 1998, having a chassis which extends behind the rearmost point of the rearmost tires and which has a lower rear surface that meets the guard width, height, and rear surface requirements of § 571.224 in effect on the date of manufacture, or a subsequent edition.

(2) A motor vehicle, not described by paragraph (1) of this definition, having a chassis which extends behind the rearmost point of the rearmost tires and which has a lower rear surface that meets the guard configuration requirements of § 393.86(b)(1).

* * * * *

Pulpwood trailer. A trailer or semitrailer that is designed exclusively for harvesting logs or pulpwood and constructed with a skeletal frame with no means for attachment of a solid bed, body, or container.

Rear extremity. The rearmost point on a motor vehicle that falls above a horizontal plane located 560 mm (22 inches) above the ground and below a horizontal plane located 1,900 mm (75 inches) above the ground when the motor vehicle is stopped on level ground; unloaded; its fuel tanks are full; the tires (and air suspension, if so equipped) are inflated in accordance with the manufacturer's recommendations; and the motor vehicle's cargo doors, tailgate, or other permanent structures are positioned as they normally are when the vehicle is in motion. Nonstructural protrusions such as taillamps, rubber bumpers, hinges

and latches are excluded from the determination of the rearmost point.

* * * * *

Side extremity. The outermost point on a side of the motor vehicle that is above a horizontal plane located 560 mm (22 inches) above the ground, below a horizontal plane located 1,900 mm (75 inches) above the ground, and between a transverse vertical plane tangent to the rear extremity of the vehicle and a transverse vertical plane located 305 mm (12 inches) forward of that plane when the vehicle is unloaded; its fuel tanks are full; and the tires (and air suspension, if so equipped) are inflated in accordance with the manufacturer's recommendations. Non-structural protrusions such as taillights, hinges and latches are excluded from the determination of the outermost point.

* * * * *

Special purpose vehicle. (1) A trailer or semitrailer manufactured on or after January 26, 1998, having work-performing equipment that, while the motor vehicle is in transit, resides in or moves through the area that could be occupied by the horizontal member of the rear impact guard, as defined by the guard width, height and rear surface requirements of § 571.224 (paragraphs S5.1.1 through S5.1.3), in effect on the date of manufacture, or a subsequent edition.

(2) A motor vehicle, not described by paragraph (1) of this definition, having work-performing equipment that, while the motor vehicle is in transit, resides in or moves through the area that could be occupied by the horizontal member of the rear impact guard, as defined by the guard width, height and rear surface requirements of § 393.86(b)(1).

* * * * *

Wheels back vehicle. (1) A trailer or semitrailer manufactured on or after January 26, 1998, whose rearmost axle is permanently fixed and is located such that the rearmost surface of the tires (of the size recommended by the vehicle manufacturer for the rear axle) is not more than 305 mm (12 inches) forward of the transverse vertical plane tangent to the rear extremity of the vehicle.

(2) A motor vehicle, not described by paragraph (1) of this definition, whose rearmost axle is permanently fixed and is located such that the rearmost surface of the tires (of the size recommended by the vehicle manufacturer for the rear axle) is not more than 610 mm (24 inches) forward of the transverse vertical plane tangent to the rear extremity of the vehicle.

* * * * *

3. Section 393.86 is revised to read as follows:

§ 393.86 Rear impact guards and rear end protection.

(a)(1) *General requirements for trailers and semitrailers manufactured on or after January 26, 1998.* Each trailer and semitrailer with a gross vehicle weight rating of 4,536 kg (10,000 pounds) or more, and manufactured on or after January 26, 1998, must be equipped with a rear impact guard that meets the requirements of Federal Motor Vehicle Safety Standard No. 223 (49 CFR 571.223) in effect at the time the vehicle was manufactured. When the rear impact guard is installed on the trailer or semitrailer, the vehicle must, at a minimum, meet the requirements of FMVSS No. 224 (49 CFR 571.224) in effect at the time the vehicle was manufactured. The requirements of paragraph (a) of this section do not apply to pole trailers (as defined in § 390.5 of this chapter); pulpwood trailers, low chassis vehicles, special purpose vehicles, wheels back vehicles (as defined in § 393.5); and trailers towed in driveaway-towaway operations (as defined in § 390.5).

(2) *Impact guard width.* The outermost surfaces of the horizontal member of the guard must extend to within 100 mm (4 inches) of the side extremities of the vehicle. The outermost surface of the horizontal member shall not extend beyond the side extremity of the vehicle.

(3) *Guard height.* The vertical distance between the bottom edge of the horizontal member of the guard and the ground shall not exceed 560 mm (22 inches) at any point across the full width of the member. Guards with rounded corners may curve upward within 255 mm (10 inches) of the longitudinal vertical planes that are tangent to the side extremities of the vehicle.

(4) *Guard rear surface.* At any height 560 mm (22 inches) or more above the ground, the rearmost surface of the horizontal member of the guard must be within 305 mm (12 inches) of the rear extremity of the vehicle. This paragraph shall not be construed to prohibit the rear surface of the guard from extending beyond the rear extremity of the vehicle. Guards with rounded corners may curve forward within 255 mm (10 inches) of the side extremity.

(5) *Cross-sectional vertical height.* The horizontal member of each guard must have a cross sectional vertical height of at least 100 mm (3.94 inches) at any point across the guard width.

(6) *Certification and labeling requirements for rear impact protection guards.* Each rear impact guard used to satisfy the requirements of paragraph (a)(1) of this section must be permanently marked or labeled as required by FMVSS No. 223 (49 CFR 571.223, S5.3). The label must be on the forward-facing surface of the horizontal member of the guard, 305 mm (12 inches) inboard of the right end of the guard. The certification label must contain the following information:

(i) The impact guard manufacturer's name and address;

(ii) The statement ''Manufactured in ____'' (inserting the month and year that the guard was manufactured); and,

(iii) The letters ''DOT'', constituting a certification by the guard manufacturer that the guard conforms to all requirements of FMVSS No. 223.

(b)(1) *Requirements for motor vehicles manufactured after December 31, 1952 (except trailers or semitrailers manufactured on or after January 26, 1998).* Each motor vehicle manufactured after December 31, 1952, (except truck tractors, pole trailers, pulpwood trailers, or vehicles in driveaway-towaway operations) in which the vertical distance between the rear bottom edge of the body (or the chassis assembly if the chassis is the rearmost part of the vehicle) and the ground is greater than 76.2 cm (30 inches) when the motor vehicle is empty, shall be equipped with a rear impact guard(s). The rear impact guard(s) must be installed and maintained in such a manner that:

(i) The vertical distance between the bottom of the guard(s) and the ground does not exceed 76.2 cm (30 inches) when the motor vehicle is empty;

(ii) The maximum lateral distance between the closest points between guards, if more than one is used, does not exceed 61 cm (24 inches);

(iii) The outermost surfaces of the horizontal member of the guard are no more than 45.7 cm (18 inches) from each side extremity of the motor vehicle;

(iv) The impact guard(s) are no more than 61 cm (24 inches) forward of the rear extremity of the motor vehicle.

(2) *Construction and attachment.* The rear impact guard(s) must be substantially constructed and attached by means of bolts, welding, or other comparable means.

(3) *Vehicle components and structures that may be used to satisfy the requirements of paragraph (g) of this section.* Low chassis vehicles, special purpose vehicles, or wheels back vehicles constructed and maintained so that the body, chassis, or other parts of the vehicle provide the rear end protection comparable to impact guard(s) conforming to the requirements of paragraph (b)(1) of this section shall

be considered to be in compliance with those requirements.

[FR Doc. 99–22699 Filed 8–31–99; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1000, 1001, and 1004

[STB Ex Parte No. 572 (Sub–No. 1)]

Removal, Revision, and Redesignation of Miscellaneous Regulations

AGENCY: Surface Transportation Board.

ACTION: Final Rules.

SUMMARY: The Surface Transportation Board (Board) is revising and updating regulations pertaining to indexing and making documents available, and incorporating them into the Board's regulations on inspection of records. The Board is also removing seven sections from 49 CFR part 1004 that have been incorporated by the Federal Highway Administration (FHWA) into FHWA regulations, and redesignating and updating the remainder of that part.

EFFECTIVE DATE: These rules are effective October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: The Board is removing the regulations at 49 CFR part 1000, revising language from that part concerning indexing and making documents publicly available, and incorporating that revised rule into 49 CFR part 1001. We are also removing unnecessary sections of 49 CFR part 1004, and updating the remaining sections in that part.

Parts 1000 and 1001 (Availability and Indexing)

We are removing the regulations at 49 CFR part 1000, but we are also revising and updating the portions of that rule that deal with indexing and the availability of documents, and we are incorporating them into a new 49 CFR 1001.1(b). The Interstate Commerce Commission (ICC) issued the rules now found in part 1000 on June 24, 1967 (32 FR 9020) (Ex Parte No. 37) [1] in response to the passage of the Freedom of Information Act, 5 U.S.C 552 (FOIA). Under the FOIA, government records are divided into three categories: (1) Those required to be published in the **Federal Register** [section 552(a)(1)]; (2) those that must be made publicly available for inspection and copying and indexed—the so-called ''reading room'' documents [section 552(a)(2)]; and (3) all others that are to be furnished upon request unless an exception applies [section 552(a)(3) and 552(b)]. Rule 1000.10 implemented the section 552(a)(2) requirement that the three categories of reading room documents—final decisions, including concurring and dissenting opinions, made in the adjudication of cases; statements of policy and interpretation adopted by the agency and not published in the **Federal Register**; and administrative staff manuals and instructions to staff that affect a member of the public [sections 552(a)(2)(A), (B) and (C)]—be made available and indexed.[2]

The Electronic Freedom of Information Act of 1996, Pub. L. No. 104–231, 110 Stat. 3049 (1996) (EFOIA), amends the FOIA. Among other things, EFOIA adds a fourth category of reading room documents: records released pursuant to a request under section 552(a)(3) that have become or are likely to become the subject of a subsequent request—the so-called ''subsequent request'' documents [section 552(a)(2)(D)]. It also requires agencies to make available to the public a general index of subsequent request documents [section 552(a)(2)(E)] and to make that index available via computer telecommunications by December 31, 1999. In addition, EFOIA requires that all reading room documents created on and after November 1, 1996, be made available, preferably via computer telecommunications, by November 1, 1997. *Id.* [3]

Thus, section 552(a)(2) requires that we make publicly available for inspection and copying at our offices four types of documents: final decisions, policy statements, staff manuals, and subsequent request documents. Our new rule at 49 CFR 1001.1(b) provides for the availability of these documents in paper format, and it requires that those same four types of documents that were created on and after November 1, 1996, be available via computer telecommunications as well.

With respect to indexing, section 552(a)(2) provides that (a) indexes furnishing ''identifying information'' of the four types of documents be made available for public inspection and copying; (b) indexes be published and distributed quarterly or more frequently, unless such publication is ''unnecessary and impracticable''; and (c) a general index of subsequent request documents be made available on the Internet by December 31, 1999:

> Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 5, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the **Federal Register** that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. Each agency shall make the index referred to in subparagraph (E) [a general index of subsequent request documents] available by computer telecommunications by December 31, 1999.

Beyond the statutory requirement that the index ''provide[] identifying information to the public as to any matter issued * * * and required by this paragraph to be made available or published,'' there is little authority as to what constitutes an appropriate index. ''Congress has imposed some very limited record-creating obligations with regard to indexing under the FOIA.'' *Kissinger* v. *Reporters Committee*, 445 U.S. 136, 152, n.17 (1980) (citation omitted). See also *Irons & Sears* v. *Dann*, 606 F.2d 1215, 1223 (D.C. Cir.

[1] The rules were originally codified at 49 CFR 100. The current part 1000 has also been revised and consists of one section, section 1000.10.

[2] Section 1000.10 also refers to the Interstate Commerce Acts Annotated (the ICAA). The ICAA was published in accordance with a 1928 Senate resolution requesting the ICC to prepare a comprehensive manuscript covering the text of laws administered by and affecting the work of the ICC, suitably annotated with digests and indexes, and to be published as a Senate document. S. Res. 17, 70th Congress, 1st Sess, January 14, 1928. Twenty-two volumes of the ICAA were published between 1930 and 1977.

Effective January 1, 1996, the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA), abolished the ICC and created the Board. Section 204(a) of the ICCTA directs the Board to rescind all regulations established by the ICC that are based on provisions of law repealed and not substantively reenacted by the ICCTA. Although the Senate Resolution was not a law, because the ICC has been abolished and the ICCTA contains no mention of an annotated compendium of laws administered by the Board, we are under no legal obligation to resurrect the ICAA (which, as noted, was last published in 1977), and the new rules delete references to the ICAA. We note that today there are many sources of information about the laws the Board implements and how we implement them, and there appears to be no reason for the Board to expend its limited resources to duplicate readily available information.

[3] The Board maintains an Electronic Reading Room at its Internet website at www.stb.dot.gov, in compliance with the EFOIA requirement that all reading room documents created on and after November 1, 1996, be accessible via computer telecommunications by November 1, 1997. All documents are available for inspection and copying from the site. We are also making available on our website FOIA annual reports. 5 U.S.C. 552(e)(2).

1979), indicating only that an agency is to ''provide[] a reasonable index. * * *''

The Board issues every business day the ''Surface Transportation Board Daily Releases'' (Daily Releases). Each Daily Releases lists all the decisional documents issued by the Board (including documents required to be published in the **Federal Register** pursuant to section 552(a)(1)) as of 10:30 a.m. on that day.[4] These documents are categorized by the decisional body that issues them (such as the entire Board, Director of the Office of Proceedings, Chief of the Section of Environmental Analysis, Secretary). Within each of these categories, the documents are further indexed in alpha-numeric order, by an alphabetical docket prefix (such as AB for abandonment-related matters, and FD for finance matters) and docket number. The title of the case, the date the matter was decided, and the document type (decision, notice, or environmental review, for example) are also provided. Finally, a brief summary of the content of the document is given. The Daily Releases also indicate how copies of the documents can be purchased. The Board's Electronic Reading Room provides the same indexing information as contained in the Daily Releases for all decisional documents in that database.

We believe that the Daily Releases, individually and collectively, in paper and electronic format, meet the section 552(a)(2) indexing requirements for decisional documents. These issuances, which represent the bulk of the Board's section 552(a)(2) documents, contain sufficient information about all (not just final) Board decisions (including policy statements in decisional format) to permit the public to identify the underlying document. Additionally, they are available for inspection and copying at the Board's office and via the Board's Electronic Reading Room. All other reading room documents (such as staff manuals that affect the public, subsequent request documents, and any policy statement that might not be issued as a decisional document) will be available for inspection and copying at the Board's offices and via the Board's Electronic Reading Room, indexed by the date of issuance and document title.

The FOIA, 5 U.S.C. 552(a)(2), requires agencies to ''publish and distribute'' the indexes on at least a quarterly basis, unless an agency finds such publication to be ''impracticable and unnecessary.'' Although we do not place the indexes in bound volumes for distribution, we believe that our practice of making all indexes conveniently available for inspection and copying and purchase satisfies the publication and distribution requirement. In the event that the publication requirement is construed to refer to bound volumes, we hereby find it unnecessary and impracticable to publish and distribute the indexes.

Part 1004

The ICCTA abolished the ICC and transferred certain of the ICC's functions and proceedings to either the Board or the Department of Transportation. Certain motor carrier functions formerly under the jurisdiction of the ICC were transferred to the Secretary of Transportation, who subsequently delegated those functions to the Federal Highway Administration (FHWA). Then, in final rules issued by the Board and FHWA, many of the regulations pertaining to these functions found in 49 CFR chapter X were transferred to and redesignated in 49 CFR chapter III. *Motor Carrier Transportation; Redesignation of Regulations from the Surface Transportation Board Pursuant to the ICC Termination Act of 1995* (61 FR 54706, Oct. 21, 1996) (*Redesignation*).

In *Redesignation*, the Board and FHWA also noted, *inter alia*, that 49 CFR part 1004 embraced matters that fell within the jurisdiction of both agencies, and that the transfer of such dual jurisdiction regulations would be effected in a separate action. Subsequently, the regulations in seven sections of part 1004 (49 CFR 1004.10 and 1004.20 to 1004.25) involving motor carrier routing and the interpretation of motor carrier operating rights were incorporated with appropriate technical changes into 49 CFR part 356 by FHWA. 62 FR 32040 (June 12, 1997). These regulations, however, were not removed from 49 CFR Chapter X. Also, the remaining two sections of 49 CFR part 1004 were not incorporated into 49 CFR Chapter III: 49 CFR 1004.10, pertaining to gifts and donations by carriers, and 49 CFR 1004.26, concerning the adjustment of claims for misrouting.

We are removing the regulations at 49 CFR 1004.2, 1004.20, 1004.21, 1004.22, 1004.23, 1004.24, and 1004.25 that have been incorporated in substance into 49 CFR part 356. These rules pertain to matters that are within the exclusive jurisdiction of FHWA .

The two remaining sections of part 1004—49 CFR 1004.10 and 49 CFR 1004.26—concern functions that are still within the Board's jurisdiction.[5] The gifts and donations regulations at 49 CFR 1004.10 were originally issued on July 24, 1969 (34 FR 12221). They were revised without substantive change in *Non-Rail Interpretations and Routing Regulations*, Ex Parte No. 55 (Sub-No. 67) (served and published in the **Federal Register** on November 22, 1988, 53 FR 47219) (*Ex Parte No. 55*).[6] We are redesignating this section as 49 CFR 1004.1 but otherwise leaving the rule unchanged.

The misrouting regulations at 49 CFR 1004.26 were originally issued in *Adjustment for Claims for Damages—Misrouting*, 319 I.C.C. 462 (1963). They were also revised without substantive change in *Ex Parte No. 55*. We are updating the regulations without making substantive changes, but we are deleting the statutory references to the statutes of limitations, and we are redesignating this section as 49 CFR part 1004.2. Finally, we are updating the authority citation while removing obsolete and unnecessary authority references.

Because these changes to Parts 1000, 1001, and 1004 either remove obsolete regulations, make revisions that are not substantive, or update rules to reflect current agency practice, we find good cause to dispense with notice and comment. 5 U.S.C. 553(b)(3)(A) and (B).

Small Entities

The Board certifies that this rule will not have a significant economic effect on a substantial number of small entities, because obsolete rules are being removed, and the changes to the remaining rules are either not substantive or reflect current agency practice.

Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

[4] The Board sometimes issues ''late releases,'' which are decisional documents served after 10:30 a.m. These documents are listed in the Daily Release for the following day.

[5] In *Revision of Authority Citations*, STB Ex Parte No. 571 (STB served Sept. 26, 1997) at 2, we ''question[ed] whether the portions of part 1004 that are not obsolete are still necessary,'' and we indicated that we would ''seek comment in a separate proceeding as to whether this rule should be maintained.'' We now believe that the two remaining sections of part 1004 do have relevance, although parties may petition the Board if they wish to have any portion of part 1004 removed.

[6] The Ex Parte No. 55 decision also consolidated the interpretations and routing regulations then found at 49 CFR 1041 and 1042 with the gifts and donations regulations and the misrouting regulations found in former part 1004. The final rules we are issuing will be similar to the pre-*Ex Parte No. 55* part 1004, pertaining only to gifts and donations and misrouting.

List of Subjects

49 CFR Part 1000

Administrative practice and procedure, Conflict of interests, Seals and insignia.

49 CFR Part 1001

Confidential business information, Freedom of information.

49 CFR Part 1004

Administrative practice and procedure.

By the Board, Chairman Morgan, Vice Chairman Morgan, and Commissioner Burkes.

Decided: August 23, 1999.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, of the Code of Federal Regulations is amended as follows:

PART 1000—[REMOVED]

1. Under the authority of 49 U.S.C. 721, part 1000 is removed.

PART 1001—INSPECTION OF RECORDS

2. The authority citation for part 1001 continues to read as follows:

Authority: 5 U.S.C. 552, 49 U.S.C. 702, and 49 U.S.C. 721.

3. Section 1001.1 is revised to read as follows:

§ 1001.1. Records available from the Board.

(a) The following specific files and records in the custody of the Secretary of the Surface Transportation Board are available to the public and may be inspected at the Board's office upon reasonable request during business hours (between 8:30 a.m. and 5 p.m., Monday through Friday):

(1) Copies of tariffs and railroad transportation contract summaries filed with the Board pursuant to 49 U.S.C. 13702(b) and 10709(d), respectively.

(2) Annual and other periodic reports filed with the Board pursuant to 49 U.S.C. 11145.

(3) All docket files, which include documents of record in a proceeding.

(4) File and index of instruments or documents recorded pursuant to 49 U.S.C. 11301.

(5) Surface Transportation Board Administrative Issuances.

(b) The following records, so-called ''reading room'' documents, are available for inspection and copying at the Board's office:

(1) Final decisions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) Those statements of policy and interpretations that have been adopted by the agency and are not published in the **Federal Register**;

(3) Administrative staff manuals and instructions to staff that affect a member of the public; and

(4) Copies of all records, regardless of form or format, that have been released to any person under 5 U.S.C. 552(a)(3) and that, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records.

(c) The Board maintains, and makes available for inspection and copying, indexes of the documents described in paragraph (b) of this section. Final decisions are indexed in the ''Surface Transportation Board Daily Releases'', which is issued by the Board every working day. This document also explains how copies of decisions can be purchased. The remaining documents are indexed as they are made available.

(d) Documents described in paragraph (b) of this section that were created on and after November 1, 1996, are indexed by service date or date of issuance and are available for viewing and downloading from the Board's Electronic Reading Room at www.stb.dot.gov, the Board's website. Final decisions are maintained in a database that is full text searchable.

4. Part 1004 is revised to read as follows:

PART 1004—INTERPRETATIONS AND ROUTING REGULATIONS

Sec.

1004.1 Gifts, donations, and hospitality by carriers.

1004.2 Misrouting, adjustment of claims.

Authority: 49 U.S.C. 721.

§ 1004.1 Gifts, donations, and hospitality by carriers.

It is unlawful for any common carrier engaged in interstate or foreign commerce to offer, make, or cause any undue or unreasonable preference or advantage to any person. Gifts or services or anything of substantial value to particular shippers or their representatives are considered violations of the law. Expenditures for such gifts may not support requests to increase carrier rates. The Board shall take appropriate enforcement action to redress such unlawful expenditures.

§ 1004.2 Misrouting, adjustment of claims.

Carriers should adjust claims for damages resulting from misrouting. Where a carrier admits responsibility for billing, forwarding, or diverting a shipment over a higher rated route than that directed by the shipper or otherwise available, the misrouting carrier should refund the difference to the shipper (or reimburse the delivering carrier, as the case may be). Where the misrouting carrier alleges justification for using the higher rated route, the Board may, at its discretion and upon appropriate petition, determine or express an advisory opinion on the lawfulness of such routing. This interpretation must not be used to evade or defeat tariff rates or to meet the rate of a competing carrier or route, nor to relieve a shipper from responsibility for routing instruction. Damages caused by misrouting are not overcharges.

[FR Doc. 99–22648 Filed 8–31–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990506119–9236–02; I.D. 040799B]

RIN 0648–AM66

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the approved provisions of a regulatory amendment prepared by the Gulf of Mexico Fishery Management Council (Council) in accordance with the framework procedures for adjusting management measures of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The rule establishes a 4–fish recreational red snapper bag limit with a 0–fish bag limit for the captain (operator) and crew of a charter vessel or headboat and changes the open periods of the fall red snapper commercial season from the first 15 days of each month to the first 10 days of each month, beginning September 1 each year. The rule's intended effect is to maximize the economic benefits from the overfished red snapper resource within the constraints of the red snapper stock rebuilding program.

DATES: This final rule is effective October 1, 1999, except for the amendments to §§ 622.34(l) and 622.34(m), which are effective September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Roy E. Crabtree, 727–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery in the exclusive economic zone of the Gulf of Mexico is managed under the FMP. The Council prepared the FMP, which was approved by NMFS and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

In accordance with the framework procedures of the FMP, the Council recommended, and NMFS published, a proposed rule (64 FR 34756, June 29, 1999) to: Set the opening date of the recreational red snapper fishing season at March 1, beginning with the 2000 fishing year; establish a 4–fish recreational red snapper bag limit with a 0–fish bag limit for captain and crew of a charter vessel or headboat; and change the open periods of the fall red snapper commercial season from the first 15 days of each month to the first 10 days of each month, beginning September 1 each year. The Council also recommended a reduction in the minimum size limit for red snapper from 15 (38.1 cm) inches to 14 inches (35.6 cm) total length. NMFS disapproved this measure under the FMP framework procedures prior to publication of the proposed rule; the preamble to the proposed rule explained NMFS' rationale for this disapproval action. After considering the Council's proposed red snapper measures and the public comments, NMFS has approved the proposed 0–fish bag limit for captain and crew of the for-hire vessels, the 4–fish bag limit for persons not fishing under the commercial quota, and the change in the duration of the commercial fall season open periods. NMFS has disapproved the proposed delay in the opening of the recreational red snapper fishing season (see response to comment 2 under ''Comments and Responses''). The preamble to the proposed rule described the need and rationale for these approved measures and also explained NMFS' rationale for disapproving the Council's recommendation to reduce the minimum size limit for red snapper to 14 inches. That information is not repeated here.

Comments and Responses

NMFS received 197 written comments on the proposed rule. A summary of the comments and NMFS' responses follow.

Comment 1: The Council requested that NMFS disapprove the 0–fish bag limit for captain and crew of for-hire vessels. The Council contends that this measure was explicitly linked with its proposal for a 4–fish bag limit and a 14–inch (35.6–cm) minimum size limit. The intent of these combined measures was to provide a substantial extension of the recreational season. The Council states that because NMFS disapproved the 14–inch (35.6–cm) minimum size limit, approval of the 0–fish bag limit for captain and crew measure would be inconsistent with its original intent.

Response: NMFS has approved the 0–fish bag limit for captain and crew of for-hire vessels based on analyses that suggest that this measure reduces catch rates by about 3 percent. The 0–fish bag limit for captain and crew, along with the 4–fish bag limit, will extend the recreational season substantially. In contrast, the 14-inch (35.6–cm) minimum size limit requested by the Council would have reduced the length of the recreational season, which is contrary to the intent of the Council, with little or no corresponding benefit to the stock.

Comment 2: One hundred ninety-four commenters opposed the delay of the start of the recreational season from January 1 to March 1. They argued that this delay would result in a 6-month closure of the recreational fishery and would cause economic hardship in the Texas tourism and hospitality industries.

Response: NMFS agrees that a delay in the opening of the recreational fishery until March 1 would cause economic hardship in areas such as South Texas that are dependent on winter tourism and that the adverse economic impact of the lost fishing days in January and February would be greatest in Texas. With a January 1 opening date, preliminary projections indicate the year 2000 fishing season would close on July 29; with a March 1 opening these analyses project an August 27 closure. Thus, the measure would extend the season further into the summer but would result in a net loss of 30 fishing days. The Council's economic analysis based on a total allowable catch of 9.12 million lb, a 5–fish bag limit, and a 15–inch minimum size limit suggests a net loss of 6,891 total fishing trips—a 1.76 percent reduction. Of these, 1,566 would be for-hire trips. While a reduction in recreational fishing effort and an extension of the season further into the summer were the intent of the Council in proposing to delay the start of the season until March 1, NMFS has disapproved this measure based upon finding it inconsistent with national standard 4 of the Magnuson-Stevens Act, which requires that the allocation of fishing privileges be fair and equitable. Approval of this measure would place an unfair economic burden on the Texas for-hire sector and would shorten the red snapper recreational fishing season.

Comment 3: Nineteen commenters supported a 4–fish bag limit; 171 commenters supported a 5–fish bag limit.

Response: NMFS believes that a bag limit of no more than 4 fish per person is necessary to reduce catch rates and extend the recreational fishing season. The Magnuson-Stevens Act requires NMFS to close the red snapper recreational fishery once the quota is caught. The Council's Socioeconomic Panel has noted that a lower bag limit with a longer season yields more economic benefits than a higher bag limit with a closure, provided the lower bag limit does not discourage anglers from fishing. Based on public testimony, the Council believes that a 4–fish bag limit would not significantly discourage anglers from fishing.

Comment 4: One individual commented on the proposed change in the duration of the commercial fall season from the first 15 days of each month to the first 10 days of each month until the fall subquota is reached. This individual believes the current commercial season has caused economic hardship in the commercial sector and suggested a continuation of the spring commercial season along with a 100–lb (45.5–kg) trip limit for the remainder of the year. This individual suggested that the fall season be eliminated if necessary to prevent exceeding the commercial quota.

Response: Trip limits to allow a red snapper bycatch were not part of the regulatory amendment submitted by the Council. The Council may wish to consider additional changes for its 2000 red snapper commercial season specifications.

Changes From the Proposed Rule

For the reasons discussed under the Response to Comment 2, NMFS has disapproved the measure delaying the opening of the recreational red snapper fishing season until March 1. That measure has been removed from this final rule.

Classification

This final rule has been determined to be significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

The amendments to §§ 622.34(l) and 622.34(m) are necessary to mitigate derby fishery effects, e.g., market gluts and lower exvessel prices, and to prevent associated adverse social and economic impacts. It is essential that these amendments are effective when the fall commercial red snapper season opens on September 1, 1999. Accordingly, under authority set forth at 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA, finds for good cause that a 30-day delay in the effective date of those measures would be contrary to the public interest.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: August 27, 1999.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.34, the suspension of paragraph (l) is lifted; paragraph (m) is removed; and paragraph (l) is revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(l) *Closures of the commercial fishery for red snapper.* The commercial fishery for red snapper in or from the Gulf EEZ is closed from January 1 to noon on February 1 and thereafter from noon on the 15th of each month to noon on the first of each succeeding month until the quota specified in § 622.42(a)(1)(i)(A) is reached or until noon on September 1, whichever occurs first. From September 1 to December 1, the commercial fishery for red snapper in or from the Gulf EEZ is closed from noon on the 10th of each month to noon on the first of each succeeding month until the quota specified in § 622.42(a)(1)(i)(B) is reached or until the end of the fishing year, whichever occurs first. All times are local times. During these closed periods, the possession of red snapper in or from the Gulf EEZ and in the Gulf on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such red snapper were harvested, is limited to the bag and possession limits, as specified in § 622.39(b)(1)(iii) and (b)(2), respectively, and such red snapper are subject to the prohibition on sale or purchase of red snapper possessed under the bag limit, as specified in § 622.45(c)(1). However, when the recreational quota for red snapper has been reached and the bag and possession limit has been reduced to zero, the limit for such possession during a closed period is zero.

* * * * *

3. In § 622.39, the suspension of paragraph (b)(1)(iii) is lifted; paragraph (b)(1)(vi) is removed; and paragraph (b)(1)(iii), is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(iii) Red snapper—4, except that for an operator or member of the crew of a charter vessel or headboat, the bag limit is 0.

* * * * *

[FR Doc. 99–22760 Filed 8–27–99; 4:44 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 052499C]

Atlantic Highly Migratory Species (HMS) Fisheries; Large Coastal Shark Species; Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishery reopening; fishing season notification.

SUMMARY: NMFS has determined that the large coastal shark (LCS) commercial fishery quota for the second semiannual fishing season has not been reached. Therefore, NMFS notifies eligible participants that the commercial fishery for LCS in the Western North Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open beginning September 1, 1999, and will close September 30, 1999, at 11:30 p.m. local time. Both the ridgeback and non-ridgeback sectors of the LCS fishery will open and close on these dates. This action is necessary to ensure adequate opportunity for eligible fishery participants to harvest the available quota and to ensure that the adjusted semiannual quota for LCS for the period July 1 through December 31, 1999, is not exceeded.

DATES: The commercial fishery for LCS will open effective September 1, 1999, and will close effective 11:30 p.m. local time September 30, 1999, and will remain closed through December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Margo Schulze or Steve Meyers, 301–713–2347; fax 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), and its implementing regulations found at 50 CFR part 635 issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

The annual commercial quota of LCS to be harvested from Atlantic, Caribbean, and Gulf of Mexico waters is apportioned between two equal semiannual fishing seasons. The second semiannual quota for LCS of 642 mt dw was reduced by the overharvest of 57 mt dw in the first semiannual fishing season such that 585 mt dw was available for harvest for the semiannual period beginning July 1, 1999.

Dealer reports and state landings summaries for the period July 1 through July 28, 1999, indicate that approximately 278.5 mt dw of the available second semiannual LCS subquota of 585 mt dw have been harvested at a rate of 9.9 mt dw per day. Approximately 306.5 mt dw of the LCS subquota have not been harvested. Therefore, given a catch rate of approximately 9.9 mt dw per day, NMFS believes that the available quota will be attained within 30 days and that a LCS commercial fishery reopening from September 1 through September 30, 1999, will allow adequate opportunity for fishermen to harvest the available quota and will ensure that the quota is not exceeded. Therefore, the LCS commercial fishery will open

beginning September 1, 1999, and will close at 11:30 p.m. local time September 30, 1999, and will remain closed through December 31, 1999. NMFS will continue to monitor landings and will close the fishery if landings indicate that the quota will be exceeded, as required under § 635.28(b).

During a closure, retention of, fishing for, possessing or selling LCS are prohibited for persons fishing aboard vessels issued a limited access permit under § 635.4. After September 30, 1999, the sale, purchase, trade, or barter of carcasses and/or fins of LCS harvested by a person aboard a vessel that has been issued a permit under § 635.4 are prohibited, except for those that were harvested, offloaded, and sold, traded, or bartered prior to the closure and were held in storage by a dealer or processor.

Commercial fishing for pelagic and small coastal sharks may continue until further notice. When quotas are projected to be reached, the AA will file notice of closure at the Office of the Federal Register. Those vessels that have not been issued a limited access permit under § 635.4 may not sell sharks and are subject to the recreational retention limits and size limits specified at §§ 635.22(c) and 635.20(d). The recreational fishery is not affected by this action.

Classification

This action is taken under 50 CFR part 635 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 26, 1999.

Gary C. Matlock

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–22672 Filed 8–26–99; 4:54 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 082699E]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock by Vessels Catching Pollock for Processing by the Inshore Component in the Bering Sea Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1999 B season pollock total allowable catch (TAC) specified to the inshore component in the Bering Sea subarea of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 26, 1999, until 1200 hrs, A.l.t., September 15, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with Section 206(b)(1) of the American Fisheries Act, 50 percent of the remainder of the pollock TAC in the BSAI after the subtraction of the allocation to the pollock Community Development Quota and the subtraction of allowances for the incidental catch of pollock by vessels harvesting other groundfish species, shall be allocated as a directed fishing allowance to catcher vessels harvesting pollock for processing by the inshore component. In accordance with § 679.20(a)(5)(i)(C)(1), the Bering Sea pollock TAC allocated for processing by the inshore component is divided into four seasonal allowances. The final 1999 amount for B season pollock in the Bering Sea subarea is 125,885 metric tons (64 FR 12103, March 11, 1999) and (64 FR 39087, July 21, 1999).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, finds that this directed fishing allowance soon will be reached. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent exceeding the final 1999 B season pollock TAC specified to the inshore component in the Bering Sea subarea of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 26, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service

[FR Doc. 99–22662 Filed 8–26–99; 4:47 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 169
Wednesday, September 1, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–33–AD]

Airworthiness Directives; Aircraft Belts, Inc. Model CS, CT, FM, FN, GK, GL, JD, JE, JT, JU, MD, ME, MM, MN, NB, PM, PN, RG, and RH Seat Restraint Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to Aircraft Belts, Inc. Model CS, CT, FM, FN, GK, GL, JD, JE, JT, JU, MD, ME, MM, MN, NB, PM, PN, RG, and RH seat restraint systems installed on, but not limited to, Beech Aircraft Corp., Bell Helicopter Textron, Inc., Cessna Aircraft Co., Dassault Aviation, Eurocopter Deutschland, Eurocopter France, Gulfstream Aerospace, Learjet Corp., Lockheed Aircraft Corp., and Piper Aircraft Corp. aircraft, that currently requires an inspection to ensure the locking mechanism is engaging properly, and replacing the buckle-half of the seat restraint system, if necessary. This action would allow an owner/operator (pilot) to determine if the locking mechanism is engaging properly, but would still require replacing the buckle-half of the seat restraint system, if necessary. This proposal is prompted by a determination made by the FAA that pilots may perform the one-time check, and that only affected seat restraint systems manufactured between March, 1997 and November, 1998 need to be checked. The actions specified by the proposed AD are intended to prevent failure of the seat restraint system due to the buckle assembly locking mechanism not engaging properly, which could result in the seat restraint system failing to properly secure the occupant during turbulence or landing.

DATES: Comments must be received by November 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–33–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Rob Romero, Aerospace Engineer, Airplane Certification Office, ASW–150, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5102, fax (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–SW–33–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–33–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On December 3, 1998, the FAA issued AD 98–25–10, Amendment 39–10936 (63 FR 67775, December 9, 1998), to require, within 10 hours time-in-service (TIS), a one-time inspection to ensure the locking mechanism is engaging properly, and replacing the buckle-half of the seat restraint system, if necessary. That action was prompted by manufacturer's reports of two failures of the seat restraint system that occurred in the field. That condition, if not corrected, could result in the seat restraint system failing to properly secure the occupant during turbulence or landing. Since the issuance of that AD, the FAA has re-evaluated its previous position and determined that ensuring the locking mechanism is engaging properly may be accomplished by a pilot. Additionally, since the issuance of that AD, the manufacturer has notified the FAA that only model-numbered seat restraint systems manufactured between March, 1997 and November, 1998 are affected, as opposed to those same model-numbered seat restraint systems manufactured during other years. In December, 1998, the FAA received a comment requesting the inclusion of the address of the manufacturer so that defective buckles could be returned for replacement. Defective buckles should be sent to Aircraft Belts, Inc., 2000 Anders Lane, Kemah, Texas 77565.

Since an unsafe condition has been identified that is likely to exist or develop on other Aircraft Belts, Inc. Model CS, CT, FM, FN, GK, GL, JD, JE, JT, JU, MD, ME, MM, MN, NB, PM, PN, RG, and RH seat restraint systems of the same type design, the proposed AD would revise AD 98–25–10 to require, within 10 hours TIS, a check to ensure the locking mechanism is engaging properly, and replacing the buckle-half of the seat restraint system, if necessary. The visual check required by this AD may be performed by an owner/operator (pilot), but must be entered into the aircraft records showing compliance

with this AD in accordance with sections 43.11 and 91.417(a)(2)(v) of the Federal Aviation Regulations (14 CFR sections 43.11 and 91.417(a)(2)(v)). This AD allows a pilot to perform this check because it involves only a visual check to ensure the locking mechanism is engaging properly and also allows a pilot to replace any buckle half since it is such a simple procedure.

The FAA estimates that 12,278 seat restraint systems would be affected by this proposed AD, that it would take approximately one-half work hour to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $10 per buckle half. The manufacturer has stated that it will provide the buckle half to owner/operators at no cost. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $368,340.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40114, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10936 (63 FR 67775, December 9, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Aircraft Belts, Inc.: Docket No. 98–SW–33–AD. Revises AD 98–25–10, Amendment 39–10936.

Applicability: Model CS, CT, FM, FN, GK, GL, JD, JE, JT, JU, MD, ME, MM, MN, NB, PM, PN, RG, and RH seat restraint systems manufactured between March 1997 and November 1998 that are installed on, but not limited to, Beech Aircraft Corp., Bell Helicopter Textron, Inc., Cessna Aircraft Co., Dassault Aviation, Eurocopter Deutschland, Eurocopter France, Gulfstream Aerospace, Learjet Corp., Lockheed Aircraft Corp., and Piper Aircraft Corp. aircraft, certificated in any category.

Note 1: This AD applies to each seat restraint system identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For seat restraint systems that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 10 hours time-in-service after the effective date of this AD, unless accomplished previously.

To prevent failure of the seat restraint system due to the buckle assembly (buckle) locking mechanism not engaging properly, which could result in the seat restraint system failing to properly secure the occupant during turbulence or landing, accomplish the following:

Note 2: The part number (P/N) of the seat restraint system is on the identification label located on each end of the seat restraint system near the anchor point (Example: P/N MD A2626–E010). The model is designated by the first two letters of the P/N.

(a) Visually check all affected seat restraint systems to determine if the locking mechanism is engaging properly in accordance with the following:

(1) Open the lift lever of the buckle fully until it will not open any further. This will cause the locking mechanism to pivot on the pivot pin.

(2) Allow the spring to close the lift lever slowly until the lift lever is back to its at-rest position.

(3) After the lever is completely closed, examine the slot in the bottom of the buckle. The locking mechanism should be firmly seated against the edge of the slot as shown in Figure 1.

BILLING CODE 4910–13–P

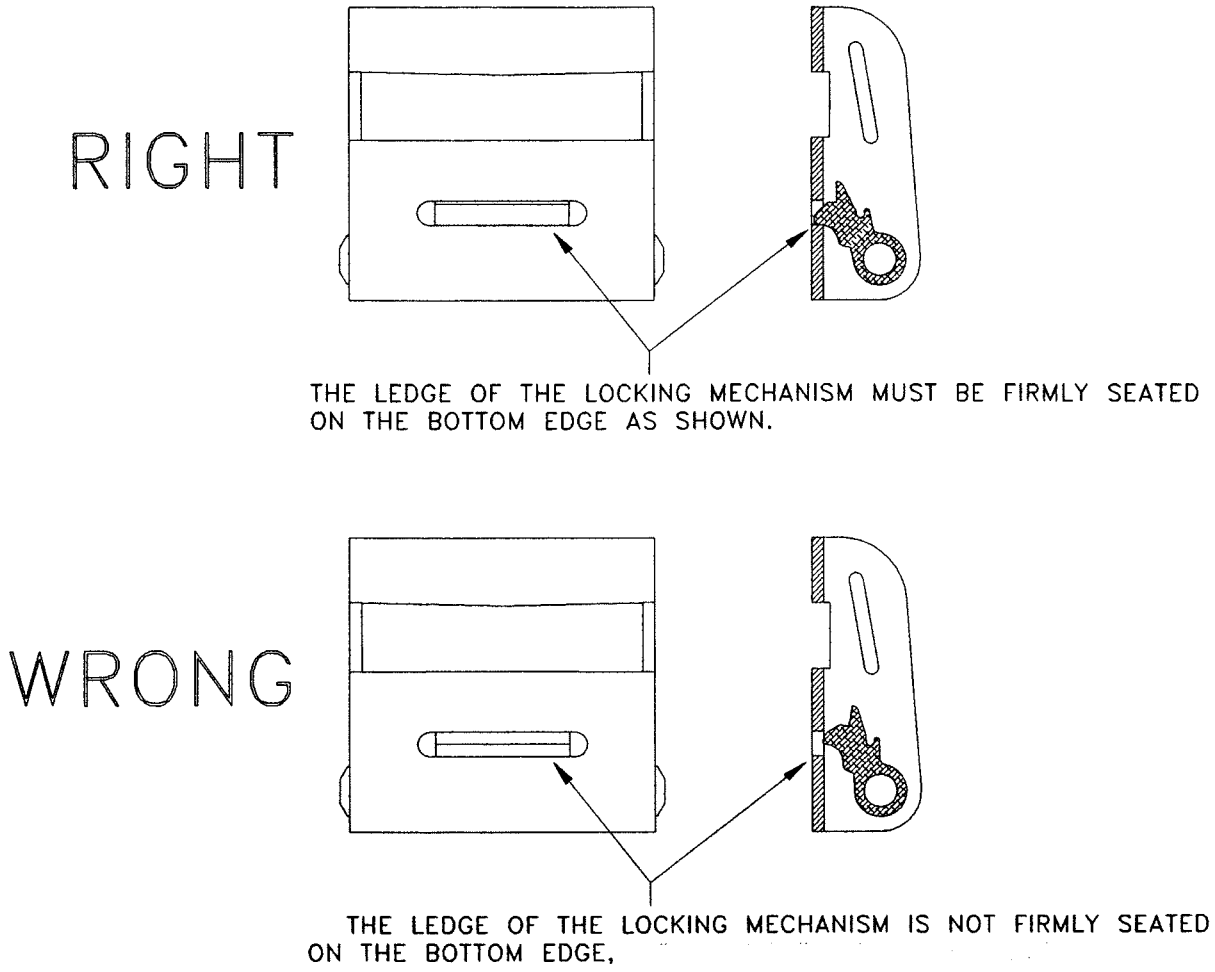

Figure 1

BILLING CODE 4910–13–C

(b) If the locking mechanism does not seat properly, replace the buckle with an airworthy buckle.

(c) The requirements of this AD may be performed by an owner/operator (pilot) holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with this AD in accordance with §§ 43.11 and 91.417(a)(2)(v) of the Federal Aviation Regulations (14 CFR sections 43.11 and 91.417(a)(2)(v)).

Note 3: If the seat restraint systems' locking mechanisms are found to be functioning properly after the visual check described in paragraph (a) of this AD, the following is an example of a maintenance record entry that may be used:

''AD (number), paragraph (a) complied with by visual check. Seat belt buckle locking mechanism(s) found serviceable. (Date) (Aircraft total time-in-service). (Signature) (Certificate number and type of certificate held)''

If any of the seat restraint systems' locking mechanisms are found to malfunction after the visual check described in paragraph (a), the following is an example of a maintenance record entry that may be used:

''AD (number), paragraphs (a) and (b) complied with by visual check and replacement of seat belt buckle locking mechanism(s) on (seat location(s)) with airworthy buckle(s). (Date) (Aircraft total time-in-service). (Signature) (Certificate number and type of certificate held)''

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Airplane Certification Office, FAA. Operators shall submit their requests through a FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Airplane Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Airplane Certification Office.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on July 27, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–22774 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANM–08]

Proposed Establishment of Class E Airspace, Glendive, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This proposal would establish a Class E En Route Domestic Airspace Area in the vicinity of Glendive, MT. The intended effect of this action is to provide controlled airspace for the development of an off-airway route between Bismarck, ND, and Glendive, MT.

DATES: Comments must be received on or before October 18, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 99–ANM–08, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 99–ANM–08, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–ANM–08.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above, both before and after the closing date, for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) to establish a Class E En Route Domestic Airspace Area in the vicinity of Glendive, MT. this proposal is in support of an air taxi operator request to reclassify Class G uncontrolled airspace to Class E airspace for the purpose of conducting direct routing in Instrument Flight Conditions (IFR) between Bismarck, ND, and Glendive, MT. The FAA establishes Class E airspace in those areas where there is a requirement to provide IFR en route air traffic control services but the Federal airway segment is inadequate. This proposal would allow controlled airspace between the two cities, thereby allowing direct route flight and saving considerable time over present available non-direct routes.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as en route domestic airspace areas are published in Paragraph 6006 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6006 Class E airspace designated as an en route domestic airspace area

* * * * *

Glendive, MT

That airspace extending upward from 1,200 feet AGL bounded on the east by the west edge of V–493, on the south by the north edge of V–2, and on the northwest by the southeast edge of V–545.

* * * * *

Issued in Seattle, Washington, on August 18, 1999.

Daniel A. Boyle,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 99–22754 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 2

[Docket No. 97N–0023]

RIN 0910–AA99

Use of Ozone-Depleting Substances; Essential Use Determinations

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulation on the use of chlorofluorocarbon (CFC) propellants in self-pressurized containers to make it consistent with other laws. FDA is proposing to set the standard it will use to determine when the use of an ozone-depleting substance (ODS) in a product regulated by FDA is essential under the Clean Air Act. Under the Clean Air Act, FDA, in consultation with the Environmental Protection Agency (EPA), is required to determine whether the use of an ODS in an FDA-regulated product is essential. FDA is also proposing in this rule to remove current essential-use designations for products no longer marketed and for metered-dose steroid human drugs for nasal inhalation. FDA would add or remove specific essential use designations for other products by engaging in separate notice-and-comment rulemaking.

DATES: Written comments on the proposed rule should be submitted by November 30, 1999. See section V of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. See section III.B.15 of this document for electronic access addresses.

FOR FURTHER INFORMATION CONTACT: Leanne Cusumano, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Description of the Proposed Rule
  A. Major Changes From the ANPRM
  B. ''Ozone–Depleting Substance'' versus ''Chlorofluorocarbon''
  C. Elimination of Current § 2.125(b)
  D. Removal of the Term ''Propellant''
  E. Change to Essentiality Determinations
  F. Listing of Active Moieties
  G. Metered-Dose Steroid Human Drugs for Nasal Inhalation
  H. Products No Longer Marketed
  I. Petitions to Add New Essential Uses
    1. Commercially Marketed Drugs
    2. Investigational New Drugs
    3. Evidence to Support New Essential Uses for Investigational and Noninvestigational Products
  J. Elimination of Outdated Transitional Provisions
  K. Determinations of Continued Essentiality
III. Comments on the ANPRM
  A. General Comments About the ANPRM
  B. Specific Comments on the ANPRM
    1. Number of Alternatives Proposed
    2. Specific Comments on the Proposed Criteria for Phaseout
    3. Intolerance or Allergy to Drug Products or Propellants
    4. Patient Subpopulations
      a. Children
      b. Elderly
      c. Other subpopulations
    5. Experimental Nature of Alternative MDI's
    6. Choice of Technically Feasible Alternatives
    7. Proventil HFA
    8. Postmarketing Data and Suggested Duration
    9. Timing of Phaseout
    10. Nasal Steroids
    11. Miscellaneous Comments
    12. Incentives for Development of Alternatives
    13. Cost of New Products
    14. Environmental Impact of CFC–MDI Use
    15. Proposed Mechanism for Phaseout
    16. International Mandate (Montreal Protocol)
    17. Legal Arguments
IV. Legal Authority
V. Proposed Implementation Plan
VI. Request for Comments
VII. Analysis of Impacts
  A. Introduction
  B. Economic Impacts
    1. Regulatory Benefits
    2. Regulatory Costs
    3. Distributive Impacts
  C. Small Business Impact
    1. Initial Analysis
    2. Description of Impact
    3. Analysis of Alternatives
  D. Conclusion
VIII. The Paperwork Reduction Act of 1995
IX. References

I. Background

The United States, as a party to an international agreement called the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) (September 16, 1987, S. Treaty Doc. No. 10, 100th Cong., 1st sess., 26 I. L. M. 1541 (1987)), has agreed to phase out production and importation of ODS's, including CFC's. The United States has generally banned the use of CFC's in consumer aerosols for decades and eliminated almost all manufacture and importation of CFC's as of January 1, 1996. The Montreal Protocol permits Parties to the Protocol to continue to produce or import CFC's for use in essential medical products upon approval by the Parties.

FDA, in consultation with EPA, determines whether a medical product is essential under the Clean Air Act. FDA lists essential medical products in § 2.125 (21 CFR 2.125). Most of the medical products listed as essential are metered-dose inhalers (MDI's). FDA will continue to designate ODS medical products such as MDI's as essential until non-ODS medical products adequately serve the needs of patients. The United States, through EPA, must apply annually to the Parties to the Montreal Protocol for a specific CFC production or importation allowance for CFC–MDI's that FDA has designated as essential. However, the United States has agreed to eventually phase out all uses of CFC's. FDA is developing a strategy to ensure that the health and safety of patients in the United States are protected during the transition away from CFC use in medical products.

In the **Federal Register** of March 6, 1997 (62 FR 10242), FDA published an advanced notice of proposed rulemaking (ANPRM) that sought public comment on transition options. One approach that FDA suggested was that ODS products be considered nonessential if: (1) Alternative product(s) is (are) being marketed (a) with the same active moiety, (b) by the same route of administration, (c) for the same indication, and (d) with approximately the same level of convenience of use compared to the product containing CFC's; (2) adequate supplies and production capacity exist for the alternative products to meet the needs of the population; (3) at least 1 year of postmarketing use data for each product are available and persuasive evidence shows patient acceptance of the alternative product(s) in the United States; and (4) there is no persuasive evidence to rebut a presumption that all significant patient subpopulations are served by the alternative product(s). FDA received almost 10,000 comments on the ANPRM, and addresses those comments later in this proposed rule.

II. Description of the Proposed Rule

FDA is proposing to make the following changes to § 2.125: (1) Use the phrase ''ozone-depleting substance'' instead of the word ''chlorofluorocarbon'' in the title and text of the regulation; (2) eliminate current § 2.125(b) because it is explanatory material that has no regulatory effect; (3) in current § 2.125(c), define the products that are subject to § 2.125 as any food, drug, device, or cosmetic that is, consists in part of, or is contained in, an aerosol product or other pressurized dispenser that releases an ODS, rather than limiting the definition to those products that use CFC's as a propellant; (4) change the designation of ODS products not listed in § 2.125(e) from adulterated and misbranded to nonessential; (5) list as separate essential uses each active moiety marketed under the current essential uses for metered-dose steroid human drugs for oral inhalation and metered-dose adrenergic bronchodilator human drugs for oral inhalation; (6) eliminate the essential-use designation in current § 2.125(e) for metered-dose steroid human drugs for nasal inhalation; (7) eliminate the essential-use designations in current § 2.125(e) for products that are no longer marketed; (8) set the standard to determine when a new essential-use designation should be added to § 2.125; (9) eliminate outdated transitional provisions in current § 2.125(g), (h), (i), (j), (k), and (l); and (10) set standards to determine whether the use of an ODS in a medical product remains essential.

A. Major Changes From the ANPRM

This proposed rule contains many changes from the ANPRM. FDA is proposing these changes in response to comments received and as the agency's thinking on the issue evolved. This document discusses in detail the changes and the reasons for the changes. FDA is highlighting the following major components here to allow for a clearer understanding of the proposed rule:

1. The agency is not proposing to use a therapeutic class approach as discussed in the ANPRM. FDA proposes to use a moiety-by-moiety approach to determine whether the use of an ODS in a medical product remains essential. An active moiety is the part of a drug that makes the drug work the way it does. Many different drug products may be marketed with the same active moiety.

21 CFR 314.108(a) defines active moiety as ''the molecule or ion, excluding those appended portions of the molecule that cause the drug to be an ester, salt (including a salt with hydrogen or coordination bonds), or other noncovalent derivative (such as a complex, chelate, or clathrate) of the molecule, responsible for the physiological or pharmacological action of the drug substance.''[1]

2. FDA is proposing to require more than one acceptable non-ODS alternative per an active moiety to be marketed before FDA would consider removing an essential use designation for the same active moiety if that active moiety is represented by multiple products or multiple strengths.

3. FDA had planned to publish a separate proposed rule to reorganize and update § 2.125 and to change the criteria for adding new essential use listings. FDA has decided not to publish a separate proposed rule. FDA combined the proposals into this proposed rule to prevent confusion and to present all proposed revisions to § 2.125 in the same proposed rule.

B. ''Ozone–Depleting Substance'' Versus ''Chlorofluorocarbon''

FDA is proposing to use the term ''ozone-depleting substance'' instead of the word ''chlorofluorocarbon'' in § 2.125. The use of the term ''ozone-depleting substance'' would bring § 2.125 into conformity with other Federal laws governing ODS's. The term would be defined by cross-reference to the list of substances subject to control under the Clean Air Act (40 CFR part 82, subpart A, appendices A and B). The Clean Air Act contains comprehensive lists of chemical substances considered by EPA to be ozone-depleting. CFC's are only one of the many ODS's listed by EPA. If the change from the term CFC to ODS does bring additional products within the scope of § 2.125, manufacturers of those products must seek an essential-use exemption under § 2.125 in compliance with the Clean Air Act. However, FDA believes the only ODS's released by FDA-regulated products are the CFC's released by drug products already listed in § 2.125(e). Accordingly, the agency does not believe that this change will have any substantive effect on FDA regulated products in use today.

C. Elimination of Current § 2.125(b)

The agency is proposing to eliminate current § 2.125(b), which describes the effects of CFC's on the atmosphere. This explanatory material has no regulatory effect.

D. Removal of the Term ''Propellant''

FDA is proposing to eliminate the definition of propellant under current § 2.125(a) because the word is not used in the proposed regulation. The agency is proposing to define the products that are subject to § 2.125 as any food, drug, device, or cosmetic that is, consists in part of, or is contained in, an aerosol product or other pressurized dispenser that releases an ODS, rather than limiting the application of § 2.125 to the use of a CFC as a propellant in a self-pressurized container. This definition is intended to encompass all products that are regulated by FDA.

E. Change to Essentiality Determinations

FDA proposes to change the adulterated and misbranded provisions of current § 2.125(c). Current § 2.125(c) states that any CFC product not found in § 2.125(e) is adulterated and/or misbranded in violation of the Federal Food, Drug, and Cosmetic Act (the act). FDA is proposing to make § 2.125 correspond with its authority under the Clean Air Act to determine whether an ODS product is essential. FDA notes that EPA is responsible for enforcing the provisions of the Clean Air Act. However, FDA is not stating by its removal of the adulterated and/or misbranded provision from § 2.125 that a nonessential ODS product is not adulterated or misbranded. Such products are still adulterated and misbranded under the act.

Current § 2.125(c) will become § 2.125(b) once current § 2.125(b) is eliminated.

F. Listing of Active Moieties

FDA is proposing to reorganize the list of essential uses for metered-dose steroid human drugs for oral inhalation (current § 2.125(e)(2))[2] and metered-

[1] For purposes of this proposed rule, an essential use for an active moiety would cover all enantiomers of molecules containing the active moiety, as well as racemic and nonracemic mixtures of those enantiomers. In cases where an enantiomer has substantial clinical differences from the racemate, a petition could be submitted under proposed § 2.125(f) to list the use of the enantiomer as a new essential use.

Stereoisomers are molecules that have the same constitution (i.e., molecular formula and chemical connectivity), but differ in the spatial orientation of the atoms. When two stereoisomers are mirror images, but are not superimposable upon each other (like left and right hands), they are referred to as enantiomers. Enantiomeric molecules are identical in all physical and chemical properties, except in an environment that is also chiral (characterized by handedness). Polarized light is such an environment, and pairs of enantiomers rotate the plane of polarization by equal amounts in opposite directions. Enantiomers may be either right-handed (dextro-rotary) S(+)-isomers or left-handed (levo-rotary) R(-)-isomers. Racemates are equimolar mixtures of enantiomers of the same molecule. See 62 FR 2167, January 15, 1997, for additional explanation.

[2] FDA proposes to use the term corticosteroids rather than the general term steroids to describe the

dose adrenergic bronchodilator human drugs for oral inhalation (current § 2.125(e)(3)). FDA is proposing to list separately each currently marketed active moiety designated as essential in proposed § 2.125(e)(1) and (e)(2). This reorganization would not change the essential-use listings substantively. Any person wishing to market a product not listed in § 2.125 that uses an ODS would need to petition the agency under proposed § 2.125(f) to have the use of the active moiety added to § 2.125.

G. Metered–Dose Steroid Human Drugs for Nasal Inhalation

FDA is proposing to remove the essential-use designation in current § 2.125(e)(1) for metered-dose steroid human drugs for nasal inhalation. FDA bases this proposal on the following: (1) Adequate alternative non-ODS products for steroid human drugs for nasal inhalation are currently available, including metering atomizing pumps for administering nasal corticosteroids, other nonsteroidal nasal topical therapies, and systemic therapies; (2) patients use the alternative products on a widespread basis; and (3) these alternative products have been and continue to be produced and supplied at sufficient levels to meet patient needs. FDA notes that, unlike other ODS medical products currently being marketed, the diseases for which these products are indicated are not life threatening and the Parties to the Montreal Protocol no longer grant essential-use allocations for nasal steroids. FDA also notes that only the three active moieties beclomethasone, budesonide, and triamcinolone are marketed as CFC-nasal steroids. Beclomethasone and triamcinolone are also marketed in non-CFC formulations.

H. Products No Longer Marketed

FDA proposes to remove the essential-use designations listed in current § 2.125(e)(4), (e)(6), (e)(7), and (e)(9), respectively, for the following no longer marketed ODS products: (1) Contraceptive vaginal foams for human use; (2) intrarectal hydrocortisone acetate for human use; (3) polymyxin B sulfate-bacitracin zinc-neomycin sulfate soluble antibiotic powder without excipients, for use on humans; and (4) metered-dose nitroglycerin human drugs administered to the oral cavity. These drug products are either no longer being marketed or are no longer being marketed in a formulation containing CFC's (see section II.K of this document).

marketed metered-dose steroid human drugs for nasal and oral inhalation.

I. Petitions to Add New Essential Uses

FDA believes that it would be inappropriate to add new essential uses to § 2.125 in all but the most extraordinary circumstances because of the relatively near-term phaseout of the production and importation of ODS's.

FDA is proposing to require compelling evidence in support of a petition for a new essential use. For purposes of this proposed rule, compelling evidence is evidence sufficient to establish with reasonable scientific certainty the truth of the matter asserted. The evidence should be detailed and capable of scientific analysis and discussion. Unsupported, conclusory statements are not compelling evidence. Because the Clean Air Act mandates an opportunity for public comment before FDA makes a determination of essential use, a petitioner must disclose all relevant information in a petition filed under proposed § 2.125. Such information will become publicly available.

1. Commercially Marketed Drugs

FDA is proposing to limit initiation of rulemaking to establish a new essential use for those noninvestigational products for which compelling evidence shows: (1) Substantial technical barriers exist to formulating the product without ODS's; (2) the product will provide an unavailable important public health benefit; and (3) use of the product does not release cumulatively significant amounts of ODS into the atmosphere or the release is warranted in view of the unavailable important public health benefit.

This new standard would apply to all requests for essential-use exemptions submitted after the effective date of the final rule.

2. Investigational New Drugs

FDA is proposing to amend § 2.125 to remove paragraphs (i) and (j) and to revise paragraph (f) to provide a process for adding investigational uses to § 2.125(e). FDA would permit investigational use of an ODS medical product if compelling evidence shows: (1) Substantial technical barriers exist to formulating the investigational product without ODS's; (2) a high probability that the investigational product will provide an unavailable important public health benefit; and (3) use of the investigational product does not release cumulatively significant amounts of ODS into the atmosphere or the release is warranted in view of the high probability that the investigational product will provide an unavailable important public health benefit.

Although FDA regulations at current § 2.125(j) allow an investigational drug product sponsor to collect data to demonstrate that a CFC use is essential upon a lesser showing than that required under current § 2.125(f),[3] the sponsor is not permitted by EPA regulations to obtain CFC's until the sponsor's proposed use is listed in § 2.125(e). This has prevented any investigational new drug use from being added to current § 2.125(e) as an essential use.

FDA would decide whether an investigational use should be added to § 2.125(e) in response to a citizen petition submitted under § 10.30 (21 CFR 10.30) and after notice-and-comment rulemaking. If FDA amended proposed § 2.125(e)(4) to include an investigational use, that determination would not allow commercial manufacture and marketing of an ODS product. A sponsor would need to file a separate petition under § 2.125(f)(1) to provide for a new essential-use determination for commercial marketing of the ODS product.

3. Evidence to Support New Essential Uses for Investigational and Noninvestigational Products

First, the petitioner must demonstrate through compelling evidence that substantial technical barriers exist to formulating the product without ODS's. Generally, FDA intends the term ''technical barriers'' to refer to difficulties encountered in chemistry and manufacturing. A petitioner would have to establish that it evaluated all available alternative technologies and explain in detail why each alternative was deemed to be unusable to demonstrate that substantial technical barriers exist. Alternative technologies not suitable for use by general patient populations may be suitable for use in a clinical investigation due to the increased medical supervision provided and the limited use of the investigational new drug (see FDA Response to Biovail Citizen Petition, Docket No. 95P–0045). Also, if a petitioner shows that the cost of using

[3] Under current § 2.125(j), a sponsor may use a CFC product under an investigational new drug application (IND) if the sponsor explains why a CFC propellant is used in the product rather than another propellant or another dosage form, the benefit the investigational product is believed to have, and the benefit the sponsor hopes to demonstrate by the studies.

Under current § 2.125(f), a sponsor cannot market a CFC product unless the sponsor demonstrates that there are no technically feasible alternatives to the use of a CFC in the product; that the product provides a substantial health benefit, environmental benefit, or other public benefit that would not be obtainable without the use of the CFC; and that the use does not involve a significant release of CFC's into the atmosphere or that the release is warranted in view of the consequence if the use were not permitted.

a non-ODS in a product is prohibitively high in comparison to the cost of using an ODS, the agency might consider cost as a technical barrier.

Second, the petitioner for a new essential use for a noninvestigational product must include in their petition compelling evidence of an unavailable important public health benefit. For investigational products, FDA proposes requiring a petitioner to provide compelling evidence that there is a high probability that the investigational product will provide an unavailable important public health benefit. ''High probability'' means that it is substantially more likely than not that the investigational product will provide an unavailable important public health benefit.

The agency intends to give the phrase ''unavailable important public health benefit'' a markedly different construction from the current phrase ''substantial health benefit.'' A petitioner should show that the use of an ODS would save lives, significantly reduce or prevent an important morbidity, or significantly increase patient quality of life to support a claim of important public health benefit. A petitioner should also show that patients cannot access non-ODS products and that no technology is readily available to produce and distribute non-ODS products. In unusual cases, FDA might accept a showing of nonclinical health benefit, such as the safety of the health care practitioner using the product.

Third, the proposed new criteria require a showing supported by compelling evidence that the use of the product does not release significant amounts of ODS into the atmosphere or that the release is warranted in view of the important public health benefit.[4] A petitioner should submit a well-documented statement of the number of products to be manufactured and the amount of ODS to be released by each product.

J. Elimination of Outdated Transitional Provisions

FDA is proposing to eliminate § 2.125(h). Section 2.125(h)(1) is an out-of-date transition provision requiring the submission of new drug applications (NDA's) for products without an NDA but covered under § 2.125. Section 2.125(h)(2) describes which drug products may be the subject of an abbreviated new drug application (ANDA). This provision predates passage of the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the Hatch-Waxman Amendments). The Hatch-Waxman Amendments and regulations implementing the Hatch-Waxman Amendments govern the generic drug approval process and have rendered § 2.125(h)(2) out of date. FDA is proposing to eliminate § 2.125(g), (k), and (l) because they are also transition provisions.

Section 2.125(d) is reserved in this proposal so that proposed § 2.125(e) will correspond to current § 2.125(e), which is cross-referenced in 40 CFR 82.66.

K. Determinations of Continued Essentiality

In § 2.125(g), FDA proposes criteria to determine whether an essential-use designation should be removed from § 2.125(e).

Under proposed § 2.125(g)(1), FDA would propose to remove an active moiety from the essential-use list (§ 2.125(e)) if it were no longer marketed in an ODS formulation. FDA believes failure to market indicates nonessentiality because the absence of a demand for the product sufficient for even one company to market it is highly indicative that the use is not essential.

Under the proposed second criterion, after January 1, 2005, FDA could find a CFC product containing a particular active moiety nonessential if the product no longer met the essential-use criteria (§ 2.125(f)). Even if all current essential-use moieties are not reformulated, sufficient alternative products may exist in the future to fully meet the needs of patients. FDA would designate any remaining CFC products as nonessential. FDA would consult with an advisory committee and provide the opportunity for public comment before making such a determination.

Under proposed § 2.125(g)(3) and (g)(4), an ODS product would remain essential until: (1) A non-ODS product(s) with the same active moiety is(are) marketed with the same route of administration, for the same indication, and with approximately the same level of convenience of use; (2) supplies and production capacity for the alternative(s) exist or would exist at levels sufficient to meet patient need; (3) at least 1 year of U.S. postmarketing data exist; and (4) patients who medically require the ODS product are adequately served by available alternatives.

In addition, under § 2.125(g)(4), an active moiety containing ODS that is marketed under more than one NDA or marketed in multiple strengths would not be removed from the essential-use list unless at least two non-ODS products with the same active moiety were marketed. FDA anticipates that ODS products of the same active moiety marketed in distinct strengths will need to be replaced by non-ODS products of the same active moiety with more than one strength.

In evaluating indications, FDA will require a non-ODS alternative to have a broader indication or (an) identical indication(s) to that of the ODS product containing the active moiety to be removed from the list of essential uses, except for minor wording changes that do not materially change the meaning of the indication.[5]

In evaluating whether an alternative has approximately the same level of convenience of use, FDA will consider whether the product has approximately the same or better portability and requires approximately the same amount of or less preparation before use as the ODS product containing the same active moiety. FDA is aware that the MDI is the most widely used delivery system for administering drugs by oral inhalation for the treatment of asthma, chronic obstructive pulmonary disease (COPD), and other respiratory diseases. Physicians and patients value the compact size and ease of use of MDI's. At present, FDA considers non-ODS MDI's and multiple-dose dry powder inhalers (DPI's) to have approximately the same level of convenience of use as MDI's.[6] FDA does not consider single-dose DPI's currently marketed in the United States to have the same level of convenience of use as CFC–MDI's because patients must carry the device and a supply of the drug and must load the device prior to each use. Manufacturers may develop additional products that FDA will evaluate on a case-by-case basis to determine whether the products have approximately the same level of convenience of use as MDI's.

In evaluating whether supplies and production capacity for the non-ODS product(s) exist or will exist at levels sufficient to meet patient need, FDA will consider whether a manufacturer of a non-ODS alternative is able to manufacture the non-ODS alternative in sufficient quantities to satisfy patient demand once the ODS product containing the same active moiety is no

[4] The petitioner must show only a high probability of an important public health benefit for an investigational product.

[5] For example, the non-ODS product could be indicated for treatment of asthma and chronic obstructive pulmonary disease (COPD), whereas the ODS product might only be indicated for asthma.

[6] Although multiple-dose DPI's may offer a similar level of convenience of use, FDA is not at this time proposing that they meet the other criteria in § 2.125(g) necessary to qualify as acceptable alternatives.

longer marketed. FDA expects that the non-ODS product will be manufactured at multiple manufacturing sites if the ODS product was manufactured at multiple manufacturing sites. FDA will always work to ensure that no harm to the public health of the United States occurs because of drug product shortages during the transition to non-ODS products.

In evaluating postmarketing data, FDA will look at a composite of all available information. FDA expects to see data showing the acceptance of a non-ODS product in widespread use outside of controlled trials and in subgroups not represented adequately in the clinical trials that served as the basis for marketing approval. FDA will also look for information on device performance in uncontrolled settings, tolerability of products in widespread use, unusual adverse reactions not previously identified in premarketing studies, and effectiveness in broader patient populations.

FDA will evaluate whether patients who medically require the ODS product are adequately served by available alternatives by determining whether adequate safety, tolerability, effectiveness, and compliance exist for the indicated populations and other populations known to medically rely on the ODS product.

FDA will encourage sponsors to obtain postmarketing use data and to assess the safety, effectiveness, tolerability, and patient acceptance of possible alternatives in postmarketing clinical studies. In particular, FDA will encourage sponsors to seek data regarding patient subpopulations not fully represented in premarketing clinical trials. FDA will also evaluate data on acceptance, device performance, tolerability, adverse events, and effectiveness by using postmarketing studies and postmarketing use and surveillance data, including FDA's MEDWATCH data. Health professionals who monitor for and report serious adverse events and product problems to FDA either directly or through the manufacturer are integral to this process. MEDWATCH makes it easier for health professionals to report adverse events and product problems to FDA by operating a single system for reporting. The MEDWATCH program is supported by over 140 organizations, representing health professionals and industry, that have signed on as MEDWATCH Partners to help achieve these goals.

CDER's Office of Post-Marketing Drug Risk Assessment actively analyzes MEDWATCH data on adverse drug reaction reports from hospitals, health care providers and lay persons to identify Adverse Drug Reaction patterns that might indicate a public health problem (a ''signal''). FDA staff trained in the analysis of these data critically and individually review the reports of serious adverse events to detect serious unlabeled reactions. FDA staff epidemiologists and the relevant review division evaluate these signals for further action.

In addition, FDA will consider foreign data supportive of U.S. postmarketing use data if U.S. and foreign formulations, patient populations, and clinical practices were the same or substantially similar. FDA will monitor events related to the transition to non-ODS alternatives in other developed nations for any information relevant to the U.S. transition, including information regarding the safety, effectiveness, tolerabiltiy, performance, and patient acceptance of non-ODS alternative products.

In addition, the public will have the opportunity to comment on the acceptability of alternatives before FDA removes the essential use designation for any particular active moiety. FDA encourages health care professionals and patients to submit medically significant data based on actual use regarding the acceptability of alternatives and whether alternatives adequately serve patient subpopulations.

FDA will also consider whether a high-priced non-ODS product is effectively unavailable to a portion of the patient population because they cannot afford to buy the product.

III. Comments on the ANPRM

FDA received 9,596 comments on the ANPRM. FDA categorized the comments as general comments about the ANPRM and specific comments on the proposed criteria for phaseout. Unless otherwise noted, the comments address the criteria FDA proposed to use to determine when to eliminate the essential-use designations for metered-dose steroid human drugs for oral inhalation and metered-dose adrenergic bronchodilator human drugs for oral inhalation.

A. General Comments About the ANPRM

FDA received 8,979 general comments about the ANPRM. The general comments were submitted by 7,371 users of MDI's, 1,015 parents of MDI users, 847 relatives of MDI users, 417 health care professionals, 160 organizations, 3 industry members, 1 consultant, and 42 government entities. Many comments fell within multiple submitter categories.

1. Approximately 4,000 of these comments expressed general opposition to the phaseout of CFC–MDI's. The Clean Air Act requires the phaseout of CFC–MDI's, when they are no longer essential.

FDA is issuing this proposed rule as part of a transition process to ensure that the phaseout is safe for the users of MDI's. FDA expects CFC–MDI's to remain on the market until FDA determines under the criteria in this proposed rule that safe and effective alternatives exist.

2. More than 1,400 comments asked that the agency not remove MDI's until alternatives are available. Nearly 800 comments requested that the agency not remove any MDI's until alternatives exist for all CFC–MDI's.

The agency will not remove essential-use designations for MDI's until sufficient alternatives are available to serve the patients who require these CFC–MDI's. This was the intent of the ANPRM, and is the mandate under the Clean Air Act and the Montreal Protocol. However, the agency cannot require companies to produce a non-CFC product for every CFC–MDI currently marketed. Accordingly, the agency cannot guarantee that every CFC–MDI on the market today will be replaced by a non-CFC product containing the same active moiety. However, users of CFC–MDI's not replaced by non-CFC products with the same active moiety could use other non-CFC alternatives. Thus, there may be a time, even if all currently available CFC–MDI's are not replaced by non-CFC products with the same active moiety, that the use of CFC's in MDI's would no longer be essential. The public will have the opportunity to comment on all essential use designations and the removal of any designation.

3. Over 500 comments asked that the agency proceed cautiously.

The agency is proceeding with full caution. To obtain the largest possible number of public comments, the agency first published an ANPRM before proceeding with rulemaking. FDA is now in rulemaking, a process that includes publishing this proposed rule, receiving and incorporating further comments on the proposal, and issuing a final rule. As proposed, the final rule would not phase out any CFC–MDI for the treatment of COPD or asthma. Rather, the final rule will finalize the criteria by which FDA will determine whether to begin rulemaking to eliminate an essential use because of the existence of acceptable non-CFC alternative products. Any such rulemaking would provide to the public the opportunity for further comment.

4. Over 1,500 comments stated that there are problems switching between products, and about 600 comments requested a long transition period. About 1,000 comments stated that MDI's provide benefits unavailable with alternatives.

FDA is working to ensure that the patient's transition from CFC to non-CFC products is as easy as possible. The agency wants patients to have adequate time to find acceptable replacement products. In recognition of the fact that MDI's provide certain benefits not available with some current alternatives, the agency is proposing to require that an alternative have the same route of delivery, indication, and approximate level of convenience of use as a CFC–MDI.

5. More than 900 comments expressed concern about the cost of replacement products and the removal of generics.

As part of any subsequent proposed rule to eliminate an essential-use listing for a CFC–MDI, FDA will consider the cost of alternative products in determining whether patients are adequately served by the non-ODS products.

6. Approximately 890 comments did not discuss the ANPRM, 21 comments were indecipherable, 2 comments were abusive or insulting, and 1 comment was threatening.

FDA will not address these comments.

7. Numerous comments focused on the environmental impact of CFC use. About 1,700 comments stated that MDI's are responsible for minimal amounts of CFC's, 117 comments said that there was no proof that CFC's harm the environment, 10 comments said they wanted MDI's to remain on the market regardless of the effect on the environment, 254 comments said FDA should focus on other sources of CFC's, 271 comments said FDA should focus on consumer aerosols, 743 comments said FDA should focus on other environmental problems, and 400 comments said that MDI's do not release CFC's into the atmosphere because they are inhaled.

Through the Clean Air Act and the Montreal Protocol, the United States has committed to eliminate the use of all CFC's, including use of CFC's in MDI's when no longer essential. The agency notes that EPA has found the release of CFC's to be harmful. MDI's do release CFC's into the atmosphere after inhalation because the vast majority of the aerosol puff released is CFC, and the CFC contained in each puff is either directly released into the atmosphere or inhaled and subsequently exhaled by the patient. The agency also notes that, for nearly two decades, no consumer aerosols other than CFC–MDI's and other products listed in § 2.125 have been allowed to use CFC's in the United States.

B. Specific Comments on the ANPRM

FDA received a number of specific comments on the phaseout criteria proposed in the ANPRM. The agency categorized the comments and responds to them in the following section of this document.

1. Number of Alternatives Proposed

In the ANPRM, FDA sought comments on phasing out CFC–MDI's using either a therapeutic class approach or a moiety-by-moiety approach. Under the therapeutic class approach, FDA would eliminate the essential-use designation for a class of CFC–MDI's once three acceptable non-CFC alternatives existed for the class. FDA would require two of the three alternatives to contain different active moieties. Under the moiety-by-moiety approach, FDA would eliminate the essential-use designation for an active moiety's CFC–MDI's once at least one acceptable non-CFC alternative existed that contained that active moiety.

8. Five comments requested that FDA phase out a CFC product once one non-ODS product was on the market. One comment requested that the agency allow phaseout only if there were a non-ODS product for each active moiety. One comment said it was very important that the non-ODS product contain the same active moiety.

FDA is proposing to use the moiety-by-moiety approach overall. However, FDA notes that some companies are unlikely to reformulate their CFC products into non-ODS products because of economic considerations. Some manufacturers of CFC–MDI's with small market shares have already stopped marketing their products. Therefore, in addition to using the moiety-by-moiety approach, FDA is proposing a process to remove products from the essential-use list if the products are no longer marketed or, after January 1, 2005, if available non-ODS products fully meet the needs of patients who previously required the product on the essential-use list.

9. One comment requested that FDA phase out long-acting CFC–MDI's but permit rescue inhalers to remain on the market as CFC–MDI's.

U.S. law does not permit CFC use to continue once acceptable alternatives exist. FDA is proposing this rule to protect the public health by setting criteria designed to ensure that adequate treatments exist throughout the CFC phaseout.

10. One comment asked that FDA not allow a phaseout until there are at least three or more non-CFC containing alternatives.

FDA is proposing to require that at least one acceptable alternative for each active moiety be marketed before elimination of an essential-use designation. This means that many alternatives representing many different active moieties will exist before the transition to non-ODS products is complete.

11. Four comments stated that two different active moieties within a therapeutic class were not sufficient, but did not explain why or offer an alternative number. One comment stated that the therapeutic class approach would not permit sufficient alternatives to serve all patient subgroups because it would reduce the number of products available once three non-CFC products were available. Nine comments claimed that there are medically significant differences among individual members within the therapeutic classes of drugs proposed by FDA. One comment stated that the various short-acting beta-2 agonists on the market such as albuterol, terbutaline, and pirbuterol are essentially identical. One comment asked that no CFC products be removed until 75 percent of all products had been replaced, but did not provide a justification for using an exact percentage. Six comments stated that the proposal to eliminate all CFC products within a class once two alternatives were on the market could lead to a situation in which no high-potency formulations, such as fluticasone propionate, were available. The comments noted that the high-potency formulations are more convenient to use because they require fewer puffs per dose. One comment asked that FDA require one low-, one medium-, and one high-potency inhaled steroid to maintain asthma control and compliance. One comment requested that FDA ensure that alternatives existed for not only fast-acting MDI's, but also corticosteroids. One comment requested that inhaled salmeterol not be banned without an exact replacement. One comment stated that 30 percent of patients using inhaled corticosteroid use Aerobid, yet Aerobid could be deemed nonessential if three other products reach the market first.

After careful consideration of the public comments, FDA has decided not to propose to use the therapeutic class approach. Rather, FDA is proposing to use a moiety-by-moiety approach. This means that FDA would not propose eliminating the essential use for an

active moiety unless patients had access to the same active moiety in at least one non-ODS product. FDA is proposing to require at least two different non-ODS products for an active moiety if an active moiety is marketed under multiple NDA's or exists in multiple strengths.

12. Three comments requested that more than one alternative for albuterol exist before phaseout of albuterol CFC–MDI's.

FDA is proposing to require at least two acceptable alternative non-CFC products for all active moieties manufactured under multiple NDA's from multiple sponsors, including albuterol, before it will consider eliminating the essential use designation for that active moiety.

13. Two comments stated that not all short-acting bronchodilators or inhaled steroids are therapeutically equivalent. One comment requested that the agency require well-documented bioequivalency before CFC–MDI's are removed from the market. One comment requested that FDA demonstrate that all products within a class are substitutable for all patient subpopulations. One comment suggested considering safety and efficacy, potency, delivery to target, bioavailability, and bioequivalence in evaluating replacements.

The agency will evaluate safety and efficacy, potency, product quality, and bioavailability in the course of evaluating new non-CFC products for approval, as it does in evaluating all new drugs. The agency agrees that not all drugs for the treatment of asthma and COPD are therapeutically equivalent or bioequivalent. However, drugs need not be strictly therapeutically equivalent or bioequivalent to each other to provide effective alternative treatment for a disease. It is not the agency's goal to replace CFC–MDI's with only bioequivalent non-ODS products. Rather, it is the agency's goal to ensure that adequate acceptable alternatives exist to meet the needs of patients who have relied on CFC–MDI's.

14. One comment stated that there are few scientific studies that demonstrate the equivalent doses between different inhaled corticosteroid preparations.

FDA agrees that such data are for many reasons lacking for the currently available CFC products. FDA is encouraging sponsors of alternative products to submit clinical trials with comparator arms using a currently available CFC formulation to provide data to assess comparability of clinical effects.

15. One comment stated that anti-inflammatories, also called corticosteroids, are the mainstay of asthma control, and therefore FDA should not phase out CFC corticosteroids until there are sufficient non-CFC corticosteroids.

As explained previously, FDA is not proposing to eliminate the essential-use designation for any individual active moiety until at least one non-CFC alternative exists that contains the same active moiety or, after January 1, 2005, until adequate alternatives exist, as described in proposed § 2.125(g).

16. Five comments stated that over-the-counter (OTC) epinephrine-containing bronchodilator drugs should not be given an essential-use exemption. Of those comments, one stated that FDA's assertion that OTC medications are used only by the poor or those without access to medical care was not supported by their research. One comment stated that OTC–MDI's are relied upon by people who do not choose traditional medicine or who do not have access to medical care.

Epinephrine CFC–MDI's are manufactured under multiple NDA's. FDA will evaluate the essentiality of epinephrine the same way it will evaluate the essentiality of all active moieties manufactured under multiple NDA's. As explained previously, FDA is not proposing to eliminate the essential-use designation for any individual active moiety marketed under multiple NDA's until at least two non-CFC alternatives exists that contain the same active moiety or, after January 1, 2005, until adequate alternatives exist, as described in proposed § 2.125(g).

17. Two comments stated that the use of spacers may affect the delivery and effectiveness of new drugs. One of the comments stated that even with the same drug and dose, different delivery systems could result in different distribution of particle size with different spacers and, therefore, different patterns of deposition in the lung and different effectiveness levels. The other comment stated that in the case of albuterol, the actuator orifice with the CFC-based product is 0.022 inch while the hydrofluoroalkanes (HFA) orifice is 0.009 inch, with both canisters having the same internal pressure. The comment stated that the difference in orifice size results in significant differences in aerosol characteristics when used with an improperly sized adaptor and requested that the manufacturers of adapters be provided adequate time to modify their products to accommodate the new, HFA-based preparations.

FDA agrees that interactions between spacers and non-ODS–MDI's and CFC–MDI's may differ, given the different pharmaceutical properties of these products. However, spacers and holding chambers are usually approved for general use rather than for use with specific products. A patient decides with his or her health care practitioner whether to use such a device with an MDI, regardless of whether the MDI is a CFC–MDI or a non-CFC alternative.

2. Specific Comments on the Proposed Criteria for Phaseout

18. One comment requested that FDA compress the time it takes to develop a final regulation and to phase out nonessential CFC–MDI's.

FDA recognizes that it often takes an extended period of time to publish a final rule. However, this time is necessary, particularly in the context of this rule, for FDA to fully consider the comments provided and to make sound policy decisions based on strong science and responsiveness to important public concerns.

19. Two comments requested that FDA define the terms ''postmarketing surveillance, subpopulations, therapeutic class, [and] convenience of use'' to reduce the likelihood and viability of administrative or legal challenges.

Since FDA has chosen not to propose to use the therapeutic class approach, FDA is not defining the term ''therapeutic class.'' FDA has provided explanations regarding its proposed application of the other terms in section II of this document.

20. One comment requested that FDA require the same delivery system rather than the same route of delivery for replacements.

FDA believes advances in technology may bring even more convenient delivery systems to market, and therefore it is not requiring the same delivery system.

21. One comment stated that FDA's requirement of ''same indication'' should include all current indications and patient populations covered by CFC products containing the same active moiety. One comment asked FDA to require replacements for all currently approved indications, including indications for exercise-induced asthma and for children age 4 and older.

FDA agrees generally that non-CFC products with the same active moiety should be approved for the same indications as their CFC counterparts prior to being considered as alternatives. For example, if a CFC–MDI is approved for use in the pediatric population down to age 6 but non-ODS products are only labeled down to age 12, a significant patient subpopulation would exist that would not be adequately served by non-ODS products. Absent other data, the agency would not eliminate the

essential-use designation for the CFC–MDI based on this factor alone.

22. One comment stated that evaluation of the level of convenience should consider dosing regimes, including number of refills per month; type, size, and shape of the product; and physical and mental ability of the patient to operate the product, taking into account patient education. One comment said it is appropriate to consider tolerability, patient compliance, or convenience only if these factors relate to safety and effectiveness.

FDA will consider such factors in determining whether replacement products are adequate replacements, even if the factors do not directly affect efficacy and safety. For instance, FDA would not consider a product that needs to be administered with an air-pressure driven nonportable nebulizer a viable replacement for a CFC–MDI because of its lack of portability and ease of use, even if it were as safe and effective as an MDI.

23. One comment stated that FDA should require convincing evidence of adequate production capacity and component supply from non-CFC product manufacturers. One comment said that a manufacturer should not be required to demonstrate supply capacity as long as there is a reasonable transition period, and that supply capacity should be considered inadequate only if due to limited capacity or manufacturing problems. One comment said that FDA needs to account for the potential risk of an out of stock situation in implementing any phaseout.

FDA already has mechanisms in place to determine whether a drug shortage exists and to manage supply (see *Manual of Policies and Procedures (MAPP) 4730.1—Drug Shortage Management, Center for Drug Evaluation and Research, FDA*). FDA will use such procedures to evaluate whether non-CFC product manufacturers have sufficient production capacity and potential capacity to manufacture non-CFC products for all patients who currently use the CFC product(s).

24. Two comments requested that the agency collect scientific evidence on the effectiveness of alternatives.

FDA will continue to require NDA's to comply with all applicable new drug laws and regulations (see, e.g., section 505 of the act (21 U.S.C. 355)). As with all new drug products, FDA is requiring clinical data from adequate and well-controlled trials to establish the safety and effectiveness of non-CFC products prior to approval. FDA is also requiring at least 1 year of postmarketing data on the use of alternatives by the general population before it will propose removing the essential-use designation for any CFC–MDI.

25. One comment requested that the agency not base the phaseout proposal on the assumption that manufacturers are developing alternatives.

The agency is not assuming that manufacturers are developing alternatives, nor is it projecting a timetable for availability of any such products. Rather, FDA is establishing a framework to use once alternatives are available.

26. One comment asked that FDA eliminate broad exemptions from § 2.125.

The agency is proposing to narrow the exemptions in § 2.125 by listing the individual active moieties exempted rather than listing classes of drugs. For convenience, FDA proposes listing each active moiety under a heading describing its use.

27. One comment suggested that FDA follow the Australian model for phaseout. Australia has proposed reducing CFC use over time by simply eliminating a percentage of the amount of CFC's used in MDI production each year.

FDA is not proposing this approach because it is concerned that in the U.S. market such an approach would not ensure that patients' needs were met throughout the transition.

3. Intolerance or Allergy to Drug Products or Propellants

28. Eleven comments pointed out that many asthmatics are allergic to propellants and inactive ingredients such as alcohol, sulfate, oleic acid, trisorbitan oleate, lecithin, and lactose. Two comments stated specifically that albuterol alone was not a sufficient alternative because of patient intolerance. One comment requested that, with a doctor's written authorization, patients be permitted to continue to use CFC–MDI's until a non-CFC alternative to which they were not allergic was available. One comment noted that some patients develop a potentially fatal addiction to the aerosol component of MDI's and requested that FDA require manufacturers to put warnings on CFC–MDI labels and develop nonaerosol alternatives.

FDA acknowledges that intolerance and sometimes true allergies or addiction to drug products or components are a concern for patients any time new medications are used, regardless of whether the medication is CFC-based. To address this concern, FDA is requiring at least 1 year of postmarketing data to ensure that subpopulations are served by the available alternatives without widespread intolerance or allergy. If subpopulations of patients cannot use a product because of intolerance or allergic reactions and no other medically suitable options exist for those patients, that product would not be considered an acceptable alternative to the CFC–MDI counterpart.

29. One comment stated that the side effects experienced from one drug within a class might not be experienced in using another drug in the same class. One comment stated that asthma patients need to change drugs over the course of the disease, since one drug does not always continue to work.

FDA agrees that patients may tolerate some drugs better than others or might need to switch therapies and therefore is proposing a transition strategy that would ensure that many acceptable alternatives exist before the transition to non-CFC products is complete.

4. Patient Subpopulations

a. *Children*

30. One comment stated that one of the major problems for asthma patients, particularly children, is getting the drug to the site of action.

FDA agrees that children present special concerns in terms of optimally utilizing inhalation devices. FDA intends to consider such factors when assessing the adequacy of an alternative as a replacement for a CFC-based product.

31. One comment stated that not all alternatives, including DPI's, are acceptable alternatives for children.

FDA acknowledges that devices relying on patient inspiratory efforts for the delivery of drug, such as DPI's, may not be acceptable alternatives in very young children or those with severe airflow obstruction. However, FDA anticipates that multiple-dose DPI's will serve as viable alternatives for at least some patients. In practice, FDA expects that non-ODS MDI's will most commonly serve as replacements for CFC–MDI's.

32. One comment expressed the belief that the proposed phaseout would limit access to asthma treatments and might endanger the medical stability of children with asthma.

It is not FDA's intent to limit access to therapies for any patient group. Rather, by developing a transition strategy, FDA is attempting to ensure patient access to acceptable and safe treatment throughout the mandated phaseout of CFC's.

33. One comment noted that, in the past, new products have generally been marketed without a pediatric indication

and asked how FDA would address this issue.

FDA is working on several pediatric initiatives to encourage the labeling of drugs for pediatric use. FDA recently published a final rule requiring certain sponsors to submit pediatric studies and labeling (see 63 FR 66632, December 2, 1998). In addition, the Food and Drug Administration Modernization Act of 1997 (the Modernization Act) (Public Law 105–115) provides incentives for sponsors to perform pediatric studies. Section 505A of the act (21 U.S.C. 355a) permits certain applications to obtain an additional 6 months of exclusivity if, in accordance with the requirements of the statute, a sponsor submits information relating to the use of a drug in the pediatric population. The Modernization Act also exempts from payment of prescription drug user fees supplements to NDA's proposing to include a new indication for use in pediatric populations. FDA anticipates that these provisions will result in increased pediatric labeling. Of course, FDA will evaluate whether patients, including pediatric subpopulations, are served by acceptable alternatives before proposing to remove essential-use exemptions for CFC–MDI's.

b. *Elderly*

34. One comment stated that the elderly require special education and an extended time period to become comfortable with new medications.

FDA acknowledges this comment (though disagreeing with it as a statement of general applicability to all elders) and reiterates that the intent of the proposed rule is to allow for such considerations in all patient subgroups.

c. *Other subpopulations*

35. One comment stated that medical studies have documented that African-Americans, especially in Chicago, IL, experienced consistently higher asthma mortality than Caucasians between 1968 and 1991. Two other comments stated that a study conducted in Brooklyn, NY, found that the prevalence of asthma was significantly higher among Hispanics, African-Americans, and children from the lowest income families. Another comment stated that African-Americans represent a disproportionate share of asthma sufferers and requested that any new rule issued by FDA ensure that it does not have a disproportionate adverse impact, either perceived or real, on minority persons.

FDA is aware of epidemiological data that show minorities and inner-city residents disproportionately experience asthma morbidity and mortality compared to the general population. FDA intends to take into account the needs of the entire asthma population. FDA plans to take into account the medical needs of demographic subgroups, including racial and ethnic groups, economic groups, or other socioeconomic or medical groups.

36. One comment stated that many patients in Hawaii, for genetic reasons, are sensitive to alcohol and therefore cannot use non-ODS products that contain alcohol. FDA would invite data in support of special sensitivities to be submitted to the agency at the time that any removal of an essential-use listing is proposed.

FDA stresses that the intent of the proposed rule is to ensure that adequate numbers of alternatives exist at all times in the transition to address such concerns.

37. One comment suggested that if a patient subpopulation is not served by non-ODS products, FDA allow the CFC product to remain on the market but: (1) Require the labeling to be changed to reflect use for that subpopulation only, and (2) reduce the manufacturer's CFC allowance.

The use of CFC's in a product is either nonessential or essential. If there is a portion of the population that cannot be medically served by the available alternatives, then such CFC use would remain essential.

38. One comment stated that only one CFC–MDI, terbutaline, is rated Pregnancy Category B, and that all others are rated Pregnancy Category C.

FDA acknowledges this comment. FDA believes that not all manufacturers will perform human pregnancy studies for alternative products. However, the moiety-by-moiety approach proposed is not intended to and should not reduce the number of MDI's available within each pregnancy category.

39. Two comments stated that acceptance in ''significant'' subpopulations is not a sufficient measure of the adequacy of alternatives. One comment stated that, to an asthma patient, a significant group is one. One comment asked that FDA require an affirmative showing that all patient subpopulations are served before eliminating the essential use for any product.

As the mandated phaseout of CFC's occurs, FDA intends to ensure that the U.S. market contains an acceptable number of products at all times to meet patient needs. Just as all patients are not served by one CFC–MDI, all patients will not be served by any single alternative product. FDA is proposing to make determinations of essentiality on a moiety-by-moiety approach. FDA will take into account all other available therapies, whether CFC-based or non-CFC-based, in making a determination about the essentiality of a product.

5. Experimental Nature of Alternative MDI's

40. One comment stated that the person had seen an alternative MDI manufactured by Glaxo Pharmaceuticals in limited use and that the alternative did not receive a favorable response from most of the patients who tried it. Another comment stated that the person had participated in Glaxo Wellcome studies on the non-CFC Ventolin and found that the delivery method was not as effective. One comment stated that the person had participated in a University of Arizona study to test a new drug and had to drop out before the 12-week study was over because he did not do as well with the new drug. One comment stated that five new studies on potential asthma medications were being conducted at the University of Nebraska Medical Center and that the studies should be have been completed in late 1997.

FDA is aware that sponsors are conducting extensive research to determine which CFC–MDI replacements are safe and effective in the treatment of asthma and COPD patients. FDA expects that, as a result of reformulation efforts and extensive clinical programs, asthma and COPD patients will have adequate treatment alternatives throughout the transition. FDA also expects that not every treatment alternative will be equally effective for every patient, just as not every CFC–MDI works the same for every patient. However, in making essential-use determinations, FDA will assess whether the entire market, including specific non-ODS alternatives for a particular CFC–MDI, other non-CFC products, and remaining CFC products, is adequate to serve patient needs.

41. One comment stated that Pulmicort is a good alternative. Two comments stated that budesonide is a good alternative that does not use CFC's and asked when it would be approved in the United States.

Budesonide (Pulmicort) is approved for marketing in the United States as a multiple-dose DPI. Because budesonide is not marketed as a CFC–MDI in the United States or listed as an essential-use exemption in § 2.125(e), the factors proposed in this rule would not apply to budesonide. However, FDA will consider all available treatment options, including budesonide DPI's, in evaluating whether the use of CFC's remains essential.

42. One comment stated that the long-term effect of using other medications with CFC replacements is unknown and

that replacements may be endocrine disruptors or have other adverse effects.

All drugs, including CFC–MDI replacements, are required to meet FDA standards of safety and effectiveness before approval. After approval, FDA may require sponsors to collect and report use data that characterizes the long-term safety of the drug in humans. FDA is proposing to require at least 1 year of postmarketing data on alternatives before FDA would propose to eliminate the essential-use designation for any CFC product. Sponsors have already collected a large amount of animal and human safety data for alternative propellants used in non-CFC products. Sponsors have collected and reported pharmacology and toxicology data on alternative propellants at levels comparable to or in excess of that developed for many new drug substances and at greater levels than for most other drug product excipients.

43. One comment stated that most physicians are brand loyal and therefore will not prescribe a CFC-free product. The comment went on to state that even if a physician does prescribe the CFC-free product, a pharmacist may substitute a cheaper generic CFC product to comply with third-party payer rules.

FDA plans to continue to work with other government and nongovernment bodies to further a campaign of physician, pharmacist, and patient education to address these issues and to ensure that patients are allowed the opportunity to try non-CFC products. FDA anticipates that the non-CFC products will not be rated as bioequivalent to the CFC–MDI's. Therefore, pharmacists will not be able to substitute a CFC–MDI for a prescription written specifically for a non-CFC product.

6. Choice of Technically Feasible Alternatives

44. Numerous comments discussed DPI's. One comment said that DPI's are not an alternative to MDI's. Another comment said that powders are not the answer because one is not certain if the dosage has been inhaled or how much powder remains. Three comments said powders did not work for them. Two comments said that powders cannot be used in certain areas of the country because of high humidity. Two comments said that powders aggravate or cause dry mouth. Three comments said that many patients, most notably elderly and children, are not capable of properly using DPI's. One comment said that DPI's require patients to breathe at an inspiratory flow rate ≤60 1/minute, which may not be possible for all patients. One comment said that DPI's should not be considered a substitute because not all drugs are available as powders. One comment said that DPI's cannot be used with spacers to reduce systemic side effects and oral candidiasis and dysphonia. One comment said that Swedish experience shows that DPI's can be used by 80 to 90 percent of asthma patients. One comment said that DPI's are better than CFC–MDI's and their use should be expedited.

Manufacturers began marketing the first multiple-dose DPI's in the United States very recently. At present, FDA cannot predict whether any multiple-dose DPI will be an acceptable alternative to a CFC–MDI. FDA will use the factors determined by this rulemaking and through public comment to determine whether any particular multiple-dose DPI is an acceptable alternative.

45. One comment said that atomizers do not deliver consistent doses. Two comments said that spinhalers, because they use dry powder, can irritate the lungs. Two comments said that sometimes, when using spinhalers, the whole top of a capsule will break off, causing the user to inhale the top of the capsule and choke. One comment said that spinhalers do not deliver even dosages. One comment said that spinhalers could be used as an alternative. One comment said that breath activated inhalers are useless during a full-blown attack because there is minimal breath available to actuate the inhaler. One comment said that turbuhaler dispensers do not force the medication into the lungs and therefore are not a good alternative for fast-acting MDI's. One comment said that rotohalers are not a good replacement because it is difficult to insert the pill into the rotohaler while having an asthma attack. Three comments said that nebulizers should not be considered an alternative because they are large and not portable, require a source of electricity, and take about 15 minutes to deliver treatment. One comment said that MDI's have advantages over all alternatives.

FDA cannot predict which products will be acceptable alternatives to CFC–MDI's. FDA anticipates that non-CFC MDI's will be the primary replacements for CFC–MDI's. However, advances in technology may mean that manufacturers develop new alternatives that are even better than CFC–MDI's. In addition, non-MDI products can serve at least a portion of the patient population, even if they cannot serve the entire population. Accordingly, FDA is not limiting the rule to require that all CFC–MDI's be replaced by non-CFC MDI's. FDA will consider such products as part of an overall determination regarding whether the patient population is adequately served by available alternatives.

FDA notes that MDI's do not force medication into the lungs. MDI's deliver the medication to the mouth, but the patient must breathe in the medicine at the time they use the MDI or no medicine will reach their lungs. DPI's can be used more effectively by some patients because patients do not need to go through a two-step process to get the medicine to their lungs. Patients deliver the medication to their lungs as they inhale from the DPI.

46. Three comments said that the new inhalers should be able to use the same old Aerochambers. Two comments said that use of steroid inhalers without an Aerochamber leads to tooth decay and oral candidiasis and dysphonia. One comment suggested that manufacturers use a carbon dioxide cartridge to propel the medicine from disposable inhalers. One comment said that the specifications for a replacement inhaler should include: (1) Pocket size, (2) lightweight, (3) easy to clean, and (4) separate medicine from propellant. Five comments recommended that manufacturers put MDI's into another form, like spinhalers, injections, pumps, glass atomizers, or hand-pumped dispensers.

FDA does not control the design of new drug products. FDA is attempting to ensure that new alternatives are adequate by requiring these alternatives to meet the criteria in this proposed rule before FDA will propose the elimination of an essential use of CFC's for any active moiety.

7. Proventil HFA

47. Numerous patients commented on whether Proventil HFA, the first non-CFC MDI approved in the United States, which contains the active moiety albuterol, should replace all albuterol CFC–MDI's.

Because FDA is not proposing to eliminate the essential-use designation for albuterol in this proposed rule or in the resulting final rule, these comments will not be addressed here.

8. Postmarketing Data and Suggested Duration

48. Many comments suggested varying lengths of time to collect postmarketing data. One comment suggested that CFC–MDI's should be banned immediately. One comment stated that patient acceptance should be judged in a shorter time than 1 year. One comment suggested collecting data during the first 6 to 12 months of marketing. One comment suggested 12

months for phaseout of individual products and 6 months for phaseout of classes. One comment said that FDA should require at least 1 year of postmarketing data on alternatives before removing any comparable inhalers. One comment said FDA should wait to ban any CFC–MDI's until 1 year after all the replacements are in place. Two comments said that a postmarketing evaluation cannot be completed in less than 1 year. One comment said that inhalers should be phased out within 18 months of availability of an alternative. Two comments said FDA should require 2 to 3 years of postmarketing data. One comment recommended at least 5 years notice before banning CFC–MDI's. One comment requested that the phaseout not be completed until 2005. Three comments said FDA should allow a 10- to 15-year phaseout period. Two comments said that 1 year of postmarketing data is insufficient because most asthmatics must try a number of medications and different seasons affect the efficacy of medications. Four comments said that 1 year of postmarketing data is insufficient because it will not reveal the side effects of long-term usage.

Under this proposed rule, FDA will not begin to assess the acceptability of an alternative product as a replacement for any CFC–MDI until at least 1 year of postmarketing data is available for the non-ODS product. FDA stresses that even after it does issue a proposed rule to amend § 2.125(e) to remove an essential-use listing for a particular active moiety, the public will have time to comment on the proposal before it is finalized. FDA also anticipates that any final rule to remove an essential-use listing will permit some time for patient use of already manufactured CFC–MDI's.

49. One comment recommended that FDA implement the use of non-CFC products as rapidly as possible, provided that all patient protection and physician education elements and safeguards explained in the ANPRM are in fact carried out.

FDA does not dictate medical practice. FDA is proposing this rule to ensure that patients have medically acceptable treatments. FDA agrees that patient and health care practitioner education is an important part of the transition and is therefore actively participating in education efforts.

50. One comment said that MDI's should not be phased out until manufacturers produce a full range of MDI products with highly effective delivery, at practical prices, and a sound degree of availability. One comment requested that phaseout not occur until patients have sufficient experience with alternatives. One comment said that phaseout should not occur until replacements: (1) Are as effective as the present products, (2) are tested by FDA, and (3) cost the same as the products they replace.

FDA believes that the criteria proposed in this rule (see section II of this document) will ensure that sufficient experience exists with a full range of alternative products with highly effective delivery, at practical prices, and with a sound degree of availability before any CFC–MDI's are phased out. FDA expects that the price of replacement products will be equivalent. However, FDA does intend to consider relative costs in considering whether alternatives adequately serve patients.

51. One comment requested that FDA set a specific timeframe for the elimination of the essential-use exemption once alternatives are available but did not recommend a particular timeframe. One comment said that it is difficult to set an arbitrary time period for determining patient acceptance, because the length of time a product is on the market does not necessarily measure usage.

FDA believes it is premature to set a specific timeframe for the elimination of all essential-use exemptions because too many variables exist as to when applications for new products will be submitted to the agency, when they will gain approval, and when the products might be considered clinically acceptable alternatives to CFC–MDI's.

52. Another comment suggested that FDA should not designate a CFC–MDI as nonessential if the sponsor is exercising due diligence in developing, testing, and evaluating an alternative.

FDA expects that under the moiety-by-moiety approach in this proposal companies will not lose essential-use exemptions prior to approval of an alternative product if they are exercising due diligence in reformulating their products. However, FDA cannot guarantee that a company's CFC–MDI will remain essential merely because a company is exercising due diligence.

53. One comment stated that FDA should leave it to physicians, patients, and the market to establish when the switch to non-CFC products should be completed. Another comment said that FDA should let patients choose which product meets their needs.

Patients and their health care providers can now and will continue to be able to choose any product available on the market. However, the Clean Air Act will not allow CFC products to remain on the market if the products are not essential. FDA is required by U.S. law and regulations to determine, in conjunction with EPA, whether a medical product remains an essential use of CFC's. FDA wants to ensure through development of a planned transition strategy that the transition occurs in a manner that protects the safety of patients.

54. Another comment stated that the phaseout should not occur before 5 years of marketing because at least 5 years on the market in combination with widespread exposure in all patient subgroups is necessary to detect serious or important adverse events (citing 61 FR 51625 at 51629, October 3, 1996).

FDA notes that the alternative products will contain the same active moieties as the CFC products. Therefore, FDA has more than 5 years of exposure information from U.S. marketing for the large majority of these moieties. FDA does not believe it is necessary to have 5 years of marketing data before proposing the elimination of an essential-use designation because the active moieties in the non-ODS products will not be newly marketed.

55. One comment said that postmarketing data should address not only market penetration but also physician education; patient education; patient acceptance, particularly in the subpopulations of children and the elderly; and patient compliance. One comment said that FDA should contact patients through their doctors and have them complete a survey to determine what kind of asthmatic they are, what substitute medications have already been tried, and the result. Another comment suggested that FDA survey a representative sample of all allergists, including private practitioners, rather than relying on drug companies or selected clinics in assessing the adequacy of replacements. Another comment said that FDA should let pharmacists, not MDI manufacturers, determine the adequacy of supplies, effectiveness, and other criteria through customer surveys. One comment said that new products should contain an insert that makes comment possible or that consists of a brief ''satisfaction survey'' to be filled out. Another comment said that FDA should require objective postmarketing studies that include a sample of at least 20 percent of diagnosed asthmatics. One comment said that any postmarketing study should be limited to showing that adverse events related to a new CFC-free formulation, but not found in the CFC product's labeling: (1) Occur at very low rates; (2) do not develop in patient populations not generally included in

premarketing trials; or (3) expose drug-drug or drug-disease interactions not seen in the pivotal clinical trials, as determined by the equivalent of 100,000 patient years of exposure or a more formal postmarketing surveillance study, at the manufacturer's discretion.

One comment said that postmarketing evaluation should include FDA's factors and an analysis of the first year's postmarketing experience with regard to adverse event reports, consumer and health care professional comments, and extent of market uptake; an assessment of the ability of the manufacturer to meet the market demand for the CFC–MDI with the replacement product; and an assessment of the need for revised patient and health care professional education efforts to facilitate conversion to the replacement. Another comment said that patient acceptance should be measured through postmarketing reports that evaluate: Efficacy of the product compared to the previously used CFC product (this can include quality of life); whether the replacement product is compatible with other CFC products that the patient is also using (i.e., the new combination of inhalers); confusion regarding changes in daily dose regimens; product taste, feel, and device dimensions; mechanical performance of inhalation device; and confidence that the new product is a dependable replacement. One comment simply said that FDA should disclose the types of studies that it believes are necessary to demonstrate product comparability for phaseout purposes.

FDA's intent in requesting at least 1 year of postmarketing use data and in suggesting a postmarketing study is to gain data that demonstrate the acceptance of the product in widespread use outside of controlled clinical trial settings and in subgroups not represented in clinical trials. Although FDA will have found newly marketed products to be safe and effective through its approval process, FDA cannot assess the ability of a new non-CFC product to adequately replace in widespread use an existing CFC product without additional postmarketing data. FDA believes issues such as device performance in uncontrolled settings and tolerability of the product in widespread use are important. FDA believes that properly designed postmarketing studies would characterize the acceptability of these products better than standard postmarketing data that rely on anecdotal self-reporting.

56. One comment said that FDA should not consider the absence of a postmarketing study the basis for extending an exemption.

FDA will not require a postmarketing study if available data, including more traditional postmarketing surveillance data, are sufficient to support a finding that the CFC product is no longer essential.

57. One comment said that European postmarketing data are just as valid as United States data and should be accepted by FDA.

FDA may accept European postmarketing data and find the information useful. However, dramatic differences exist between U.S. and European health care practices and drug pricing systems. For example, products available in Europe are not necessarily pharmaceutically equivalent to those marketed in the United States. Although FDA would consider European data in making essential-use determinations, FDA would not propose to eliminate an essential-use designation unless it had additional data from U.S. populations.

58. One comment noted that medications may be accepted in different ways by patients, different medicines may not compare on a microgram (µg) per µg basis, and taste may affect patient acceptance. Another comment stated that propellants can have a significant effect on the distribution of the medication into the airways and, therefore, the effectiveness of the treatment.

FDA will evaluate these issues through premarketing comparability testing and postmarketing data before proposing the elimination of an essential-use designation from § 2.125(e).

59. One comment said that FDA may not be able to enforce current good manufacturing practice (CGMP) regulations at companies making one of three alternatives if the United States is dependent on the companies to supply the patient population.

FDA is committed to ensuring that CGMP standards are met by all manufacturers, including those producing CFC products and new alternatives. FDA does not believe that CGMP violations are any more likely to occur with alternatives than with currently available products.

9. Timing of Phaseout

60. Four comments suggested that FDA should allow the sale of CFC–MDI's in conjunction with alternatives.

Under the proposed rule, CFC–MDI's and alternatives will necessarily be sold at the same time for a period.

61. Two comments suggested that FDA require the use of non-CFC products at home and work, and CFC–MDI use only as necessary.

FDA is proposing this rule to fulfill its obligation under the Clean Air Act to make essential-use determinations that will lead to the eventual phaseout of CFC–MDI's. Once FDA has determined that a product is essential, a consumer can use the product for the essential use as needed and prescribed.

62. One comment asked why FDA is preparing this proposal now.

The Parties to the Montreal Protocol, through the Technical and Economic Assessment Panels, have asked that all Parties develop transition strategies. Parties were required to present a draft transition strategy no later than January 31, 1999, and were encouraged to present a strategy before January 31, 1998. In publishing the ANPRM, FDA provided a draft proposal for public comment and consideration domestically and internationally. FDA recognizes that rulemaking can take many months or years to complete. FDA published the ANPRM early to give the public time to comment and to give FDA time to develop a final rule that would be most protective of public health.

63. One comment asked why one is able to obtain CFC's for a car air conditioner but not for MDI's.

A consumer can obtain recycled CFC's to use in a car air conditioner but cannot obtain new CFC's. Since 1996, no new CFC's have been manufactured or imported into the United States for any use other than those uses designated as essential under the Clean Air Act. Recycled CFC's can contain impurities that would prohibit use in MDI's inhaled directly into human lungs on a chronic, recurrent basis. Manufacturers must use pharmaceutical grade CFC's in CFC–MDI's to ensure that they are safe to use.

64. One comment said that patient safety should take precedence over all other factors. One comment said that FDA should allow the phaseout to occur according to the Montreal Protocol timeframe and should not take any steps to phase out CFC–MDI's. One comment said that once patients understand the FDA proposal, they agree that it makes more sense to set up guidelines now, rather than waiting until no CFC–MDI's remain on the market and insufficient non-CFC products exist to meet patient needs.

FDA's priority is to protect and promote the public health. FDA is proposing this rule to develop a transition strategy as required under the Montreal Protocol. Through this rule, FDA seeks to ensure that public and patient health and safety are determining factors in deciding whether alternatives can replace CFC–MDI's.

65. One comment said that as more people use non-ODS products, CFC use

will decrease and the problem of CFC use will solve itself.

Although it is possible that the phaseout would occur without intervention, Title VI of the Clean Air Act mandates FDA involvement in the process. Accordingly, FDA is issuing this proposal to develop a phaseout process that will ensure that patients have adequate alternatives.

10. Nasal Steroids

66. One comment stated that nasal pumps cause postnasal drip, which can aggravate an asthmatic cough. Another comment stated that nasal pumps cause liquid to drain down the throat, so they cannot be used by people with gastroesophageal reflux disease and ulcers. Another comment claimed that nasal pumps make symptoms worse and are not appropriate for all patients. Two comments said that for noses that are very swollen and inflamed, wet sprays do not work. Another comment said that there are still substantial numbers of patients who cannot stand the sensation/taste/smell of the aqueous solutions and much prefer the aerosols.

One comment said that alternative propellants should be developed for nasal steroids, and these should be considered alternatives. Another comment suggested FDA first limit nasal steroid inhalers, which are available as both aqueous preparations and CFC-propellant preparations. Another comment stated that nasal steroid inhalers need not be exempted because there are sufficient alternatives.

For the reasons set forth previously, FDA is proposing to remove the essential-use designation in current § 2.125(e)(1) for metered-dose steroid human drugs for nasal inhalation. FDA notes that the Parties to the Montreal Protocol have not granted essential-use exemptions for manufacture of nasal steroid CFC–MDI's since the general ban on CFC production went into effect in industrialized nations on January 1, 1996. The Parties do not consider CFC-based nasal steroids to be medically essential products because of the available alternatives. Any CFC-based nasal steroids currently being manufactured are presumably being manufactured with CFC's manufactured prior to 1996. In addition, the indications for which these products are approved and used are not life threatening.

67. One comment claimed that topical nasal dexamethasone is more effective than any other product in treating nasal polyps and sinusitis. Another comment claimed that nasal steroids are superior for treatment of nasal polyps because they permit effective penetration of the nose.

FDA is unaware of any substantiating data to support the clinical superiority of any one MDI over all aqueous formulations for these or any other indications, and these comments did not themselves include any data substantiating these assertions.

68. One comment asked that FDA grant an exception for Dexacort Turbinaire because clinical trials are being done to show it has unique potential in the treatment of chronic sinusitis.

An applicant should apply for an essential-use exemption if data shows a unique use for a particular CFC product.

69. One comment said that Vancenase AQ does not dispense properly and therefore is not an adequate replacement for the old Vancenase.

FDA approved both Vancenase AQ formulations (42 µg and 84 µg) as safe and effective and, therefore, concluded that the product was of sufficient quality. FDA has no basis to believe this determination to be in error. A CFC-based nasal corticosteroid could, in theory, meet the proposed standards to become an essential use of CFC's, and the manufacturer could successfully petition the agency for a new listing under § 2.125(e). However, at this time, FDA does not believe that the current nasal corticosteroid CFC–MDI's meet the standards of essential use.

11. Miscellaneous Comments

70. One comment stated that FDA is intruding on the practice of medicine.

FDA is not intruding on the practice of medicine. FDA is fulfilling its statutorily mandated obligation to determine whether a medical product remains essential under the Clean Air Act.

71. One comment asked whether FR–12 is a replacement for CFC's in MDI's.

FR–12 is another term for CFC–12, a chlorofluorocarbon that cannot be used as a replacement.

72. One comment said that the United States was really phasing out CFC's because they can be used to make bombs.

FDA is unaware of any such motivation on the part of the United States. The Parties to the Montreal Protocol, including the United States, have agreed to phase out the use of CFC's to protect the ozone layer and the public health.

73. One comment stated that people with asthma should be on the deciding committee.

Thousands of patients provided their input through the public comment process. FDA will seek further input from patients when individual drug moieties are proposed for removal from the list of essential uses of CFC's.

74. One comment suggested that instead of removing CFC–MDI's, FDA should remove sulfites from the U.S. food supply, and that doing so would lead to a decrease in CFC–MDI use.

These issues are independent. FDA is required to make essential-use determinations under the Clean Air Act and the Montreal Protocol, regardless of the amount of sulfites in the food supply.

75. One comment said that FDA should only allow CFC–MDI use in minimally acceptable dosages for physician-certified, life threatening risks.

If the use of a CFC–MDI remains medically necessary to treat life-threatening conditions and no satisfactory alternatives exist, then the CFC use would remain essential.

76. Two comments said that FDA should publicize the proposal more, define terms for laymen, and allow adequate time for response to encourage more comments. One comment argued against granting any extension of the comment period.

FDA received approximately 9,600 comments on the ANPRM, more than on almost any other proposal in the history of the agency. The public will have further opportunities for comment as FDA finalizes the transition process and proposes to remove individual moieties from the essential-use listing. FDA plans to publicize these additional opportunities for comment in its educational programs, through its Internet site, and through press releases.

77. One comment said that if benefit outweighs risk, FDA should allow drugs to stay on the market.

FDA intends to use the criteria proposed to ensure public and patient health and safety before elimination of an essential use for an active moiety.

78. One comment said that FDA must reveal the amount of CFC's companies have stockpiled for interested parties to evaluate whether a rational basis exists for the proposed rule.

FDA does not have these data. If FDA did have the data, FDA could not disclose the data because the information is confidential and exempt from disclosure. FDA notes that the Technology and Economic Assessment Panel (TEAP) recently recommended to the Parties to the Montreal Protocol that members be permitted to maintain a maximum of 1 year of stockpiled CFC's (April 1998 TEAP Report at p. 16, section 1.2.4).

12. Incentives for Development of Alternatives

79. Fourteen comments stated that FDA should accelerate approval of CFC replacement products.

The agency is committed to the timely review of all drug applications. FDA does not believe that NDA's with CFC replacement products meet the criteria for priority review at the current time.

80. Eight comments stated that FDA should halt approval of new CFC–MDI's. One comment stated that FDA should not approve any CFC–MDI's for an active moiety for which there is an approved non-ODS product, even if it has not yet determined that the non-ODS product is an alternative.

FDA will not withhold approval for a drug product that contains a moiety listed as an essential use under § 2.125(e). FDA will not approve ODS-products not currently listed in § 2.215(e) unless FDA has determined they are essential.

81. Four comments stated that FDA should impose fines on companies who do not produce alternatives within a reasonable time or institute a tax advantage for introducing an approved replacement.

FDA does not have the authority to take either of these actions.

82. Five comments requested that FDA require MDI manufacturers to pursue the development and marketing of alternative propellants with due diligence. Two comments stated that FDA should set standards for evaluating industry's pursuit of alternatives. One comment stated that elimination of an essential use because of a lack of due diligence on the part of the manufacturer unfairly penalizes patients.

The Parties to the Montreal Protocol, including the United States, request MDI manufacturers that receive CFC allowances to demonstrate that they are pursuing alternatives with due diligence.

83. Ten comments requested that FDA support research and development of safe and effective alternatives. One comment stated that FDA should organize research using pooled resources to develop new, unpatented delivery systems.

FDA is working with industry to facilitate the development of safe and effective alternatives.

84. One comment stated that FDA should seek money from the tobacco industry for research to develop safe and effective MDI's that do not contain CFC's.

FDA does not have the statutory authority to require funding of a particular research project.

85. One comment stated that inventors of non-CFC products should be rewarded with the same patent protections as all other inventors. One comment stated that non-CFC formulations of CFC–MDI's should not be patented.

The Patent and Trademark Office of the United States awards patents in compliance with laws enacted by the U.S. Congress. FDA has no authority to award patents to new drug products.

86. One comment requested that FDA ease the rules for generic availability by allowing a non-CFC generic to become immediately available for each MDI class which has a CFC generic.

FDA does not have the authority to permit this. The act, as enacted by Congress, governs when FDA may approve a generic. FDA does not have the authority to change the act.

87. One comment stated that FDA should demand more effective delivery systems.

FDA believes that the modern MDI is an effective delivery system. Although FDA encourages advances in delivery systems, the Montreal Protocol does not mandate changes to delivery systems.

88. One comment stated that FDA should reward those who develop CFC-free products by phasing out CFC products.

FDA plans to eliminate essential uses according to the standards it develops through this rulemaking process. FDA is not considering whether any particular standard rewards non-CFC product developers. FDA is simply promoting and protecting the public and patient health and safety as it complies with the terms of the Clean Air Act and the Montreal Protocol.

89. One comment stated that FDA should allow non-CFC product manufacturers to advertise performance improvements without conducting clinical trials to prove those benefits.

FDA requires all claims to be supported by adequate evidence. FDA does not permit manufacturers to make claims of superior performance without supporting comparative evidence.

90. One comment stated that manufacturers should be allowed to advertise important technological attributes of the CFC-free MDI's.

Manufacturers may advertise claims supported by adequate evidence.

91. One comment stated that the Federal Government should favor the reimbursement of non-CFC products.

FDA does not have the authority to control drug costs or reimbursement.

92. One comment stated that it is not within FDA's statutory purview to offer incentives to spur market innovation to phase out CFC–MDI's. One comment said that it is not necessary for FDA to offer development incentives since incentives exist. Another comment said that FDA should focus on market-oriented incentives rather than ''command and control'' techniques.

FDA does not have the authority to offer incentives. FDA is simply determining whether the use of an ODS in an FDA regulated product is essential.

93. One comment said that instead of implementing the proposal in the ANPRM, FDA should: (1) Stop production of CFC's, (2) tighten issuance of essential-use allowances, (3) reimpose an excise tax, (4) subsidize use of non-CFC propellants, (5) purchase CFC stockpiles, and (6) allow production and use of CFC–MDI's until stockpiles are exhausted.

FDA does not have the authority to take these measures. FDA can only make determinations in consultation with EPA regarding whether the use of CFC's in an MDI is essential.

94. Four comments stated that users should be required to recycle their empty inhalers.

FDA does not have the authority to require specific types of CFC–MDI disposal.

95. Two comments said that the release of CFC's at MDI manufacturing plants should be regulated.

FDA may regulate the release of CFC's at manufacturing plants if the release violates CGMP's. FDA notes that the Parties to the Montreal Protocol, including the United States, encourage manufacturers to release the lowest possible amount of CFC's during manufacturing.

96. One comment stated that no new exemptions should be granted unless there is a demonstration of special medical need and benefit (e.g., an indicated use that is not available for any other approved product with the same moiety).

FDA is proposing in this rule the standards it will use to grant and maintain essential use exemptions. FDA believes the standards require a showing of special medical need and benefit.

13. Cost of New Products

97. Two comments stated that FDA should consider whether lack of competition will increase costs. Another comment requested that FDA not allow phaseout unless alternative products are manufactured by at least two independent manufacturers. A third comment requested that FDA not allow phaseout until there are at least three competitors available in each of the three categories: Quick-acting, 12-hour, and cortisone-based inhalers. One comment asked that FDA not eliminate CFC–MDI's until generic competition for the non-CFC products exists. Two comments said that if CFC substitutes are produced using proprietary

technology, phaseout should not be mandated until the technology is in the public domain. Another comment asked that asthma medicine continue to be available at the lowest possible prices. One comment stated that non-CFC products would likely be higher priced than current MDI's. Five comments stated that FDA's proposal, if implemented, would have an enormous financial impact for state Medicaid drug costs, Medicare patients, and uninsured or inadequately insured individuals who could not afford the new non-CFC agent. Another comment evaluated their institution's cost of replacing generic albuterol CFC–MDI's with Proventil HFA and concluded that the annual cost for albuterol MDI's would increase from approximately $25,000 to more than $200,000.

FDA recognizes that cost is a concern for many patients and health care providers. However, when generic products become available is dictated by manufacturers' decisions whether to produce a generic product, by U.S. patent laws, by the exclusivity provisions of the act, and by the approvability of any particular generic drug application. The agency notes that in the current market of CFC–MDI's, only the four active moieties of epinephrine, isoetharine, albuterol, and beclomethasone are marketed by more than one sponsor. Generic products are available for only one active moiety: albuterol. In part due to considerations such as those raised in these comments, FDA has proposed requiring that multiple-source CFC–MDI products be replaced by at least two non-CFC alternative products. FDA has also proposed to consider cost in determining whether alternatives meet patient needs. In addition, FDA expects that the price for most non-CFC products will approximate the price for branded CFC products (see section VII of this document).

98. Another comment stated that any FDA action should consider the research and development costs borne by all parties who strive to replace CFC in their inhalants. One comment stated that FDA should evaluate the cost of postmarketing requirements because they could also drive up costs. One comment asked how much the transition will cost. Two comments predicted that increased costs will result in decreased compliance. One comment stated that lack of generics and additional physician visits due to medication switching will increase costs.

FDA has completed an analysis of the economic impact of its proposal that addresses these issues (see section VII.B of this document).

99. Four comments stated that FDA should undertake a cost/benefits study comparing the benefits of removing CFC–MDI's from the market to the benefits of allowing continued marketing of CFC devices. One comment stated that FDA should determine whether to eliminate CFC products based on sound science that includes a cost/benefit study whose methodology is published in the **Federal Register**.

FDA has not completed such a study because a statute mandates the removal of nonessential CFC–MDI's from the market.

100. One comment said that large- and small-volume nebulizers and the hand-held ultrasonic nebulizers have been discontinued as covered Medicare devices. The comment asked that FDA work with the Health Care Financing Administration to reverse this policy.

At this time FDA does not consider traditional nebulizers to be alternatives to MDI's because they are not as portable. Therefore, the cost of these products is not addressed in this proposed rule.

101. One comment requested that FDA require new inhalers to be dispensed in the same number of ''puffs'' as the old inhalers to prevent a cost increase.

Manufacturers determine the number of puffs or the amount of medication given per puff.

102. One comment asked that new medications be available in less expensive sample sizes to allow patients to determine whether they are effective.

FDA cannot mandate the creation or distribution of physician samples. However, manufacturers generally produce such samples for new products to promote familiarity with the new product.

103. One comment requested that FDA require medicine and hospital treatments for asthma and COPD to be free to patients, or otherwise insure all asthma and COPD patients with health and life insurance.

FDA does not have the authority to require either the free distribution of medicine or the provision of health insurance.

14. Environmental Impact of CFC–MDI Use

104. One comment claimed that a continuing exemption for MDI's is permitted under the Montreal Protocol, Title VI of the Clean Air Act, and the regulatory and policy actions of EPA. The comment went on to question whether termination of the essential-use exemption for MDI's will materially advance stratospheric ozone protection and whether this benefit outweighs the potential social and economic costs of phaseout.

Eight comments stated that the pharmaceutical use of CFC aerosols accounts for less than 1 percent of worldwide consumption. One comment stated that only 0.1 percent of the fluorocarbons in today's world are generated by MDI's used for the treatment of asthma. One comment stated that only one-half of 1 percent of CFC's are generated by MDI's. One comment stated that the environmental impact of CFC's used in MDI's is minimal; therefore, it would be an inefficient use of limited regulatory resources to eliminate CFC–MDI's. One comment stated that there is no way to quantify the effect of eliminating CFC use in MDI's. One comment asked whether the continued use of CFC's in MDI's would be fatally detrimental to the health and well-being of the people of the world.

Three comments stated that CFC's do not cause ozone depletion. Four comments questioned how CFC's could reach the ozone layer.

One comment asked whether anyone knows how thick the ozone layer is supposed to be.

One comment requested that FDA provide figures for: (1) Stockpiled amounts of CFC's; (2) a comparison of CFC amounts to be released over the next decade, particularly MDI and air conditioning use; and (3) measurable change in CFC release due to FDA policy.

One comment asked whether use of an aerochamber reduces CFC release into the atmosphere and requested that if it does, FDA mandate that MDI's be manufactured with the adapters. Another comment asked whether there is a way to use inhalers without releasing CFC's into the atmosphere.

Two comments stated that CFC replacements, including the ones approved for use in MDI's, also cause ozone depletion, but to a lesser extent, and asked why FDA is planning to replace CFC's, which have a long history of safe use in humans, with toxic chemicals that also may be phased out.

One comment stated that FDA is required to prepare an environmental impact statement under the National Environmental Protection Act.

One comment stated that stratospheric ozone is our main global protectant against ultraviolet B light (UVB), and international restrictions on CFC releases will allow the progressive destruction of stratospheric ozone to cease and begin to rebuild in the early 21st century. The comment also noted

that the current generation of children face a 1:70 risk of melanoma. In addition, the comment stated that basal and squamous cell carcinoma, cancer precursor lesions, premature skin aging (spotting, wrinkling, fragility, sallow color, sagging), photo-induced medication reactions, autoimmune disease (i.e. lupus), immune suppression, porphyria, and regular sunburn are all exacerbated by the UVB rays in sunlight, which will become more intense on an increasing basis by 2010 due to ozone depletion.

One comment asked that FDA cut the CFC allocations for companies manufacturing products with technically feasible alternatives rather than for all companies across the board.

One comment stated that FDA should not assess the potential beneficial effects of reducing CFC emissions from drug products since the United States has already assessed the effects and made the decision to eliminate CFC's.

The United States evaluated the environmental effect of eliminating the use of all CFC's in an environmental impact statement in the 1970's (see 43 FR 11301, March 17, 1978). As part of that evaluation, FDA concluded that the continued use of CFC's in medical products posed an unreasonable risk of long-term biological and climatic impacts (see Docket No. 96N–0057). Congress later enacted provisions of the Clean Air Act that codified the decision to fully phase out the use of CFC's over time (see 42 U.S.C. 7671 *et seq*. (enacted November 15, 1990)). FDA notes that the environmental impact of individual uses of nonessential CFC's must not be evaluated independently, but rather must be evaluated in the context of the overall use of CFC's. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time (40 CFR 1508.7). Significance cannot be avoided by breaking an action down into small components (40 CFR 1508.27(b)(7)). Although it may appear to some that CFC–MDI use is only a small part of total CFC use and therefore should be exempted, the elimination of CFC use in MDI's is only one of many steps that are part of the overall phaseout of CFC use. If each small step were provided an exemption, the cumulative effect would be to prevent environmental improvements. FDA is merely fulfilling its obligation to make essential-use determinations for FDA-regulated products, in accordance with the Clean Air Act.

FDA notes that CFC–MDI's do release CFC's as part of their intended use. Tube spacers, inhalation techniques, and other factors do not alter this release.

15. Proposed Mechanism for Phaseout

105. One comment requested that FDA publish this proposed rule by September 1997.

FDA was not able to meet this request. The comment period for the ANPRM did not close until May 5, 1997. During the comment period, FDA received approximately 9,400 comments and has since received approximately another 200 comments. FDA required a sufficient amount of time to carefully review and analyze these numerous comments, and therefore could not publish this proposed rule by September 1997.

106. One comment said that FDA should establish target dates by which significant reductions in CFC–MDI use should be accomplished. The first date should be by the end of the year 2000.

FDA's authority under the Clean Air Act is to determine whether ODS products are essential. This proposed rule is designed to set forth the criteria FDA will use to make those determinations.

107. One comment requested that, as part of the phaseout procedure, FDA require industry to educate physicians and patients that: (1) CFC's serve no medical purpose, and (2) the transition is not about removing drugs but about getting rid of CFC's. Two comments said that FDA should require patient and physician education. One comment said that a seamless transition scheme should be developed and should include patient and health care provider educational resources and programs as well as public awareness campaigns well before projected phaseout dates. Another comment said that transition should be undertaken as a joint project by FDA, the National Asthma Education and Prevention Program (NAEPP) of the National Heart, Lung and Blood Institute of the National Institutes of Health (NIH), industry (e.g., International Consortium of Pharmaceutical Aerosol Manufacturers (IPAC), professional organizations (e.g., American Lung Association) and patient advocacy groups (e.g., Mothers of Asthmatics) to ensure dissemination of consistent information. The comment went on to say that educational efforts should include presentations at national scientific and professional meetings and seminars, consultations with public interest groups, one-on-one instruction, and publications in professional as well as lay media (e.g., flyers, posters, newspaper articles, videos, stories, plays). One comment said that FDA should consider psychological factors that could result in slow acceptance of new products. Ten comments said that patients, physicians, and managed care companies need education.

FDA recognizes the need to educate patients, health care providers, and interested parties about the planned phaseout of CFC–MDI's for the transition to non-CFC products to occur as smoothly as possible. Although FDA cannot require industry to undertake an educational plan, FDA has been involved in public education for the past several years. Members of the Center for Drug Evaluation and Research's (CDER's) Division of Pulmonary Drug Products have made presentations and participated in panel discussions on the phaseout of CFC's at national scientific and professional society meetings and will continue to do so.

The division has also worked in close cooperation with the NAEPP, an ongoing comprehensive national asthma education, treatment, and prevention program directed by the staff of the National Heart, Lung, and Blood Institute of NIH. NAEPP educates physicians, other health care providers, and patients about issues related to the prevention and treatment of asthma, including the phaseout of CFC's. The NAEPP Coordinating Committee formed a CFC Workgroup to educate patients and physicians about the CFC phaseout. The NAEPP CFC Workgroup, in cooperation with IPAC, recently developed a ''fact sheet'' for patients entitled ''Your Metered-Dose Inhaler Will Be Changing * * * Here Are the Facts.'' The fact sheet is available through the FDA web site http://www.fda.gov/cder/mdi/. The NAEPP CFC Workgroup is continuing to broaden its educational effort. FDA provides appropriate advice and assistance to the NAEPP CFC Workgroup.

FDA has also published articles on the phaseout of CFC's in FDA Consumer, Journal of the American Medical Association (JAMA), and the FDA Medical Bulletin to educate health care providers and patients about FDA actions, or proposed actions, related to the transition to non-ODS inhalation products.

The agency views these educational efforts as a critical component of the transition process and intends to continue these efforts as the transition to non-ODS products moves forward.

108. One comment stated that FDA must provide notice and an opportunity for hearing before withdrawing any drug.

FDA uses the procedures in 21 CFR 314.200 to withdraw approval of a drug. Under proposed § 2.125, FDA is not

proposing to withdraw approval of any drug. FDA is simply proposing a process for determining whether the use of an ODS in a particular medical device continues to be essential. To maximize public input, FDA will use notice-and-comment rulemaking to evaluate whether a moiety should remain on the list of essential uses.

109. One comment stated that, upon publication of a proposed rule, FDA must disclose in appropriate detail and specificity the data and technical information upon which the agency relied in reaching its policy decisions.

FDA has disclosed in the ANPRM and in this proposed rule the data and technical information upon which it relied in drafting this proposal.

16. International Mandate (Montreal Protocol)

110. Three comments said that FDA should take no further action until the plenary meeting of the Montreal Protocol Parties scheduled for November 1998.

Although FDA did not publish this proposed rule before the November 1998 meeting, it has continued to work to develop the proposal. The Parties to the Montreal Protocol suggested that Parties requesting essential-use allowances submit an initial transition strategy by January 31, 1998, and required these Parties to submit an initial strategy no later than January 31, 1999. FDA is acting now to ensure that patients in the United States are not put at risk by the phaseout.

111. Three comments stated that medical use of CFC's should be permitted and should be the only worldwide exception. One comment noted that although the total amount of CFC's used in MDI's represents a small portion of total use, that use is increasing and it is inconsistent with the Montreal Protocol to claim that a small use justifies delay.

The Clean Air Act requires the phaseout of nonessential CFC MDI's.

17. Legal Arguments

112. Seven comments challenged FDA's authority to withdraw an application because of failure to meet the essential-use requirements of § 2.125.

FDA is not proposing to withdraw approval of any applications in applying proposed § 2.125. Rather, FDA is determining whether the use of a CFC in a particular medical device remains essential as alternative products become available and are accepted. Even when a moiety is removed from the essential-use listing of § 2.125(e), the NDA's for the affected moiety need not necessarily be withdrawn under section 505(e) of the act. FDA notes that manufacturers may not be eligible to receive CFC allowances under the Montreal Protocol and the Clean Air Act even if they have approved applications.

One comment stated that FDA has no legal authority to prohibit the continued use of existing inventories of CFC's used in medical devices.

This proposed rule does not necessarily prohibit the continued use of existing inventories of CFC's in medical devices. Rather, the proposal sets forth the factors FDA would use to determine whether the use of CFC's in a medical product is essential.

113. Several comments stated that FDA does not have the statutory authority under the act to declare that a drug product is adulterated or misbranded simply because the product contains an ODS.

The agency is proposing to remove the provisions of § 2.125 that state that a product in a self-pressurized container that contains an ODS is adulterated and/or misbranded. This change should not be interpreted to mean that FDA agrees with these comments. Such nonessential products are adulterated and/or misbranded under certain act provisions, including sections 402, 403, 409, 501, 502, 601, and 602 of the act (21 U.S.C. 342, 343, 348, 351, 352, 361, and 362). The basis for FDA's authority to declare such products adulterated and/or misbranded is discussed in the preambles for the current § 2.125 and related rules and proposed rules (see 43 FR 11301, March 17, 1978; 42 FR 24536, May 13, 1977; 42 FR 22018, April 29, 1977; and 41 FR 52071, November 26, 1976). However, FDA is changing the regulation to conform to the authority delegated to it under the Clean Air Act. FDA notes that EPA is responsible for enforcement of provisions of the Clean Air Act.

114. One comment stated that all CFC–MDI's with the same active moiety as an approved non-CFC alternative must be phased out upon approval of the non-CFC alternative because: (1) Section 601(8) of the Clean Air Act (42 U.S.C. 7671(8)) indicates that as soon as a non-CFC product receives FDA approval, all CFC–MDI's for which the non-CFC product is an alternative can no longer qualify as essential; and (2) non-CFC product approval by FDA constitutes a formal administrative adjudication by FDA that there is a technically feasible alternative to the use of CFC's in certain adrenergic bronchodilator MDI's.

FDA disagrees with this comment. Section 601(8) of the Clean Air Act (42 U.S.C. 7671(8)) defines which medical products may continue to use ozone-depleting substances. The definition states:

> (8) Medical device. The term ''medical device'' means any device (as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), and drug delivery system—
>
> (A) if such device, product, drug, or drug delivery system utilizes a class I or class II substance for which no safe and effective alternative has been developed, and where necessary, approved by the Commissioner; and
>
> (B) if such device, product, drug, or drug delivery system, has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator.

The comment wrongly assumes that a non-CFC product with the same active moiety as a CFC product is a ''safe and effective alternative'' to that CFC product. A non-CFC product simply having the same active moiety as a CFC product is only one factor to be considered. Other factors, such as whether the non-CFC product has the same route of administration, the same indication, and can be used with approximately the same level of convenience, are important considerations. Additionally, FDA must consider whether patients who medically need the CFC product are adequately served by the non-CFC product. In those instances where an active moiety is marketed by two or more NDA's or marketed in multiple, distinct strengths, at least two non-CFC products that contain the same active moiety must be marketed to adequately serve the consumer.

This comment also demonstrates a misunderstanding of the meaning of an FDA-approval of a non-CFC product. FDA's approval of a non-CFC product is a determination that the product is safe and effective, but it is *not* a determination that the product is a safe and effective *alternative* to any other product. That requires a separate and distinct analysis.

The comment is correct to the extent that it indicates that once a non-CFC product that is a safe and effective alternative is approved, the CFC-product must be phased out. Those factors described previously and those incorporated into this proposed rule are factors to be considered when determining whether a non-CFC product is a safe and effective alternative to a CFC-product. FDA believes these factors are also an important part of the analysis used to determine whether a product is essential. FDA and EPA will be consulting to determine whether such medical products are essential and safe and effective alternatives.

115. One comment stated that under the Montreal Protocol, for use of an ODS in a product to be no longer essential there must be multiple alternatives and the alternatives must be: (1) Technically feasible, (2) economically feasible, (3) acceptable from an environmental standpoint, and (4) acceptable from a health standpoint. The comment stated that FDA is responsible for making determinations (1), (2), and (4), and that EPA is responsible for making the third determination.

Under this proposal, FDA is requiring the existence of feasible alternatives that are acceptable from a health standpoint before it will find any CFC–MDI no longer essential.

116. Two comments stated that there is no need for FDA to make a determination of essential use under the Clean Air Act, although it does have the authority to do so, because the determination is to be made under the Montreal Protocol.

Section 601 of the Clean Air Act explicitly directs ''the Commissioner [of FDA] in consultation with the Administrator'' of EPA to determine whether a device, product, drug, or drug delivery system is essential under the Clean Air Act (42 U.S.C. 7671(8)). This determination is different from the essential use determination made under the Montreal Protocol.

117. One comment stated that the Clean Air Act does not require a preferable or popular alternative but only an alternative that is FDA approved (safe and effective) and technically feasible.

As explained previously, although FDA approval does constitute a determination that a product is safe and effective on its own, this finding does not constitute a determination regarding whether one product is a medically acceptable alternative for another.

118. One comment discussed extensively products EPA has allowed to stay on the market and concluded that FDA should not ban MDI's.

First, FDA is not banning any MDI's. Rather, FDA is making a determination regarding whether the use of CFC's in particular medical products continues to be essential. Second, FDA cannot speak on behalf of EPA regarding why certain products may remain on the market. However, FDA notes that the comment's analysis relies on 42 U.S.C. 7671i(e), which states specifically that it does not apply to medical devices as defined in the Clean Air Act (42 U.S.C. 7671(8)).

119. One comment stated that FDA cannot find products nonessential if they do not have a therapeutically equivalent replacement.

Neither the Clean Air Act or the Montreal Protocol requires alternative products to be therapeutically equivalent to a CFC product before the CFC product can be considered nonessential.

120. One comment stated that the ANPRM conflicts with the Drug Price Competition and Patent Term Restoration Act of 1984 by impeding generic competition, because under section 505(c)(3)(D) of the act, products with an active ingredient that do not contain a new chemical entity will receive 3 years of market exclusivity and products with an active ingredient that is a new chemical entity will receive 5 years of market exclusivity. Further, patent protections may extend the time during which generic competition is prevented.

FDA recognizes that the phaseout of CFC–MDI's may affect the availability of generic products, depending on whether the phaseout occurs before generic versions of non-CFC products may be marketed. However, the Clean Air Act and the Montreal Protocol mandate the phaseout of non-essential uses of CFC's.

121. One comment noted that, in the case of Seldane, FDA acknowledged that not all patients are well-served when there are only two drugs available, and questioned whether the therapeutic class approach proposed in the ANPRM is consistent with this.

Although FDA disputes this interpretation of the Seldane notice of opportunity for hearing (62 FR 1889, January 14, 1997), FDA is no longer proposing to use the therapeutic class approach to remove essential uses from § 2.125(e).

122. One comment noted that FDA expressed concern about the differences between MDI's in its proposed rule to amend the OTC monograph for bronchodilator drug products (60 FR 13014, March 9, 1995).

FDA did express concern about the differences between MDI's in the OTC proposed rule. FDA noted that the differences meant that all new MDI's should be approved by FDA under an NDA supported by clinical trials designed to examine the effect of MDI differences. In recognition of the complexities of this dosage form, FDA is requiring each non-CFC MDI to be reviewed as a new NDA, rather than as a supplement to an existing CFC–MDI NDA. In addition, FDA has been encouraging sponsors to include in these clinical trials comparators representing the currently available CFC-based products. FDA believes its action regarding the development of the non-ODS products is consistent with its concerns expressed in the OTC proposal of March 9, 1995.

123. One comment noted that de minimis exemptions from statutory requirements are permitted and therefore requested that MDI's be exempted from the Clean Air Act requirement that all uses of CFC's cease.

FDA does not have the discretion to decide how to implement the Clean Air Act because EPA is the primary agency charged with implementing these provisions. However, as a matter of general statutory construction, provision of a specific exemption for medical products makes it unlikely that de minimis exemptions for medical products would also be permitted under the Clean Air Act.

124. One comment posited that FDA is operating under a false construct whereby the agency assumes it must follow environmental recommendations made by EPA and Parties to the Montreal Protocol.

FDA is not taking this action as a result of recommendations made by EPA or the Parties to the Montreal Protocol. Rather, FDA is complying with the statutory mandate of U.S. law as embodied in the Clean Air Act, which implements the Montreal Protocol and requires the phaseout of CFC use. FDA is taking this action to ensure that patient health is protected throughout the transition.

125. Two comments stated that FDA must comply with Executive Order 12866. One of those comments also said that FDA must comply with Executive Orders 12291, 12606, 12898, and the Regulatory Flexibility Act.

Executive Order 12291 was revoked by Executive Order 12866 section 11. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits. The agency has complied with this requirement to the extent necessary (see section VII of this document).

Executive Order 12606 was revoked and replaced by Executive Order 13045 section 7–702. Executive Order 13045 applies only to regulatory actions initiated after the date of the Executive Order (Executive Order 13045 section 2–202). The ANPRM was published on March 6, 1997, before the Executive Order was signed on April 21, 1997. Accordingly, this proposed regulatory action is exempt from Executive Order 13045. In addition, Executive Order 13045 applies only to significant regulatory actions that concern an environmental health risk or safety risk that an agency has reason to believe may

disproportionately affect children. First, this proposal is not a significant regulatory action because it is not anticipated that it will have an annual net effect on the economy of $100 million or more, nor would it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Second, the phaseout of CFC–MDI's is not an environmental health risk. Rather, the phaseout constitutes an environmental health benefit, since reduction in CFC use could decrease ongoing damage to the ozone layer and thereby decrease related health problems. In particular, children will benefit from a phaseout because they are more susceptible to skin cancers due to increased sensitivity and lifetime exposure. Therefore, Executive Order 13045 does not apply to this proposal.

Executive Order 12898 requires agencies to identify and address disproportionately high adverse human health or environmental effects on minority populations and low-income populations. The agency does not anticipate that this proposed rule, if implemented, will have any adverse effects on human health or the environment.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.) requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency has complied with this requirement (see section VII.A of this document).

126. One comment stated that FDA must assess environmental impacts under 2 U.S.C. 1532 and 1535.

The primary purpose of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq*.) is to end the imposition of unfunded Federal mandates on other governments without the full consideration of the Federal Government (2 U.S.C. 1501(2)). However, the Unfunded Mandates Reform Act does also ask agencies to estimate the impact of unfunded Federal mandates on the private sector (2 U.S.C. 1501(3)). As part of that estimate, the agency is to examine the effect of the Federal mandate on health, safety, and the natural environment. FDA has complied with this requirement (see section VII of this document). In addition, FDA believes that environmental benefits are analyzed with the regulations implementing the Clean Air Act.

IV. Legal Authority

FDA's proposal to determine when CFC uses are essential in medical devices is authorized by the Clean Air Act. EPA regulations implementing the provisions of section 610 of the Clean Air Act (42 U.S.C. 7671i) contain a general ban on the use of CFC's in pressurized dispensers (40 CFR 82.64(c) and 82.66(d)). The Clean Air Act and EPA regulations exempt from the general ban ''medical devices'' that FDA considers essential and that are listed in § 2.125(e) (42 U.S.C. 7671i(e); 40 CFR 82.66(d)(2)). Section 601(8) of the Clean Air Act defines ''medical device'' as any device (as defined in the act), diagnostic product, drug (as defined in the act), and drug delivery system, if such device, product, drug, or drug delivery system uses a class I or class II ozone-depleting substance for which no safe and effective alternative has been developed (and, where necessary, approved by the Commissioner of Food and Drugs (the Commissioner)); and if such device, product, drug, or drug delivery system has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator of EPA (the Administrator). Class I substances include CFC's, halons, carbon tetrachloride, methyl chloroform, methyl bromide, and other chemicals not relevant to this document (see 40 CFR part 82, appendix A to subpart A). Class II substances include hydrochlorofluorocarbons (HCFC's) (see 40 CFR part 82, appendix B to subpart A). Essential-use products are listed in § 2.125(e). Although § 2.125 includes a mechanism for adding essential-use products to the regulations, the regulations do not include a mechanism for removing products from the essential-use list. This proposed rule, if enacted, would provide a mechanism for FDA to remove products from the essential-use list in an orderly and rational fashion.

V. Proposed Implementation Plan

FDA proposes that any final rule that may issue based on this proposal become effective 1 year after its date of publication in the **Federal Register**. After that date, FDA would evaluate products on the essential-use list according to the criteria set forth in the rule. As the criteria for eliminating essential uses are met, FDA will publish proposals to eliminate essential uses for the appropriate individual active moieties. FDA intends that such proposals will be published and finalized in an expeditious manner.

VI. Request for Comments

Interested persons may, on or before November 30, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In particular, FDA seeks comment on the following issues:

1. The criteria FDA should use to determine whether a subpopulation is significant;

2. The type of postmarketing information FDA should consider in evaluating the adequacy of alternatives; and

3. The timing of the removal of the essential-use designation for nasal steroids.

VII. Analysis of Impacts

A. Introduction

FDA has examined the impacts of the proposed rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq*.). Executive Order 12866 directs regulatory agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Unless the agency certifies that the rule is not expected to have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. Section 202 of the Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation). The agency has conducted analyses of the proposed rule, and has determined that the rule is consistent with the principles set forth in the Executive Order and in these statutes. FDA finds that this proposed rule will not result in costs in excess of $100 million, and therefore no further analysis is required under the Unfunded Mandates Reform Act. In addition, FDA certifies that this

proposed regulation would not result in a significant economic impact on a substantial number of small entities. Thus, the agency need not prepare an interim Regulatory Flexibility Analysis.

This proposed rule would amend the regulation that permits the use of ODS's in particular circumstances by setting the standards that FDA will use to determine when the use of ODS's in FDA-regulated products is essential under the Clean Air Act. In 1987, the United States became a party to an international agreement known as the Montreal Protocol. The Parties to the Protocol have agreed to eventually eliminate all uses of ODS's. However, the Parties currently permit the use of ODS's in essential medical products. FDA, in consultation with EPA, must determine whether the uses of ODS's in medical products are essential. Currently, the United States has secured essential-use designations for the use of CFC's (which are ODS's) in MDI's through the year 2000 and will continue to seek such designations until acceptable alternatives make CFC–MDI's nonessential.

CFC's are presently used as propellants in MDI's. FDA has approved 17 active moieties that use CFC's in MDI's, although only 16 are marketed as either prescription or OTC products (see Table 1 of this document). These CFC–MDI's are approved for the treatment of asthma and other COPD's. Several manufacturers are in the process of reformulating their CFC–MDI's to use non-ODS propellants in the United States. In some foreign markets, reformulated products are already in the process of displacing or have already displaced products containing ODS's.

FDA is also proposing to remove the essential-use designation for metered-dose steroid human drugs for nasal inhalation. Four manufacturers market five CFC-nasal inhalation drug products, which constitute less than 20 percent of the nasal inhalation product market. The drug products contain either beclomethasone, budesonide, or triamcinolone. Beclomethasone and triamcinolone are also marketed in non-CFC formulations. The manufacturer of budesonide has represented publicly that it intends to market a non-CFC formulation.

B. Economic Impacts

The proposed regulation articulates the standards used by FDA to determine whether the use of CFC–MDI's is essential. This proposal would not have any economic impact, since it simply establishes the criteria FDA would use to make essential-use determinations. However, application of the rule in future rulemakings would generate both regulatory benefits and costs. FDA discusses some of those possible benefits and costs here, but notes that it would conduct additional analyses as part of its notice-and-comment rulemaking for essential-use designations for particular products.

1. Regulatory Benefits

The potential benefits of the rule are the environmental gains associated with the diminished use of ODS's in medical products. FDA has not attempted to quantify the value of these environmental improvements, which would constitute only a small fraction of the overall benefits of compliance with the Clean Air Act and Montreal Protocol. Nevertheless, even a relatively small percentage would represent a significant value. EPA has estimated in prior regulatory impact analyses that the aggregate public health benefit of the phaseout of ODS's due to reduced cases of skin cancer, cataracts, and other health effects ranges between $8 and $32 trillion (Ref. 1).

Currently, about 14.6 million patients are being treated for asthma and COPD (Ref. 2). FDA believes that these patients are treated with MDI's. Over 120 million prescriptions for the affected drug substances are dispensed each year. Although the Clean Air Act and the Montreal Protocol require the eventual elimination of essential-use designations for these products, the agency has carefully structured its rule to avoid negative impacts on the nation's public health. Most importantly, the proposed regulation would ensure that adequate supplies of reformulated products with comparable therapeutic roles are available prior to recision of an essential-use designation. An alternative product that could not demonstrate comparable therapeutic outcomes would not be considered a medically acceptable alternative and the essential-use designation for the CFC–MDI would remain in place. Thus, the rule would ensure that treatment outcomes would not be threatened as products are reformulated with acceptable, non-ODS propellants.

FDA notes that upon approval, new non-ODS products could be eligible for market protections under the Hatch-Waxman Amendments. Thus, existing lower-priced generic CFC–MDI's could disappear from the market if their active moiety were no longer designated as essential. However, FDA finds that the total number of pharmaceutical prescriptions purchased has not typically increased following the introduction of generic competition (Ref. 3). Consequently, FDA does not anticipate a significant decrease in the total number of prescriptions purchased due to curtailment of generic competition. However, these impacts may vary for particular products or markets and FDA asks for public comment on this issue, with particular attention to evaluating effects on patient affordability.

FDA also notes that removal of the essential-use designation for nasal steroids would not have a negative impact on the nation's public health. Adequate supplies of reformulated products with comparable therapeutic roles exist and are used widely by patients for the treatment of seasonal and perennial allergic rhinitis. FDA also notes that the price of the alternative nasal inhalation drugs are approximately the same as for the CFC-products on a dose per dose basis.

2. Regulatory Costs

Sponsors who elect to reformulate their products will incur significant costs to collect the detailed clinical data necessary for approval of reformulated products. One sponsor that has developed alternative formulations has stated that the total development costs of reformulated MDI's have approached $250 million (Ref. 4). FDA has no empirical data to confirm these costs, but notes that these outlays imply global expenses for replacing propellants, as required by various environmental agreements, such as the Montreal Protocol. Product manufacturers are well aware of the mandate to eliminate the marketing of ODS's and are already engaged in the development of reformulated products. Because these international development activities will continue regardless of FDA's precise standards for rescinding essential-use determinations, FDA considers these reformulation costs a direct consequence of the statutory requirements of the Clean Air Act, rather than of FDA's forthcoming regulation. Postmarketing studies of reformulated products would be part of these development costs. Thus, FDA finds that the aggregate costs of the rule are directly attributable to the enactment of the Clean Air Act.

For nasal steroids, FDA does not anticipate any regulatory costs as a result of this proposal, since the manufacturers that market the CFC-products are the same manufacturers that market non-CFC alternatives or have filed an application to do so.

3. Distributive Impacts

The future establishment of specific rules for the elimination of essential-use designations could have significant

distributional impacts on various economic sectors. In particular, FDA's essential-use designation recisions would determine when individual generic CFC–MDI's would no longer be considered essential. Such decisions could force generic consumers to switch to higher-priced reformulated, branded products until non-ODS generic products became available. These consumers could face significant cost increases, of which third-party payers, including the nation's Medicaid system, might bear roughly 70 percent. Alternatively, patients that use brand name products should experience little change in either costs or outcomes due to this rule. Experience from the United Kingdom (Ref. 4) and comments from potential manufacturers indicate that the reformulated brand name products would likely be priced comparably to current brand name products. Diminished generic alternatives are not expected to alter this expectation, as several studies have shown that the availability of generic substitutes has had little impact on the price of branded products (Refs. 3, 5, 6, 7, and 8).

Distribution systems (warehouses, distribution centers, and retail pharmacies) for pharmaceutical products are reported to generate higher profit rates per prescription for generic products than for branded products (Refs. 9 and 10).[7] Accordingly, each branded prescription substituted for a generic prescription could result in lost revenue for distributors and retailers. Generic manufacturers could also lose sales revenues following the recision of an essential-use designation, although these firms might mitigate these losses by shifting production resources to other generic products. In total, therefore, patients, third-party payers, distributors, and generic manufacturers could experience overall sector losses due to the removal of a product from the essential-use list in § 2.125.

On the other hand, manufacturers of reformulated branded products would receive increased revenues, because sales of branded products would increase by capturing the current demand for generic prescriptions.

These distributional impacts will not be triggered, however, until the completion of a future rulemaking on each ODS-containing product. FDA plans to conduct specific market analyses to determine the approximate magnitude of these economic effects prior to determining the essentiality of these ODS products.

[7] Data indicate this to be true in both absolute and proportional terms.

FDA does not anticipate any distributive impacts due to the removal of the essential-use designations for nasal inhalation products because the alternative products are marketed by the same manufacturers.

C. Small Business Impact

1. Initial Analysis

The proposed standards provide a framework for FDA's future decisions regarding essential-use designations for particular CFC–MDI's and would remove the essential-use designations for metered-dose steroid human drugs for nasal inhalation. FDA certifies that this rule would not have a significant impact on a substantial number of small entities. Nevertheless, FDA has prepared the elements of an Initial Regulatory Flexibility Analysis to alert any potentially affected small entities of the opportunity to submit comments to the agency. FDA notes that the direct regulatory costs are attributable to the Clean Air Act and Montreal Protocol mandate to phase out the use of ODS's and are not dependent upon the enactment of this proposed rule.

2. Description of Impact

The objective of the proposed regulation is to provide the basis for essential-use designations for ODS's in FDA-regulated products, without jeopardizing the public health. The proposed regulation would accomplish this objective by articulating the standards to be used for revising essential-use designations for approved drug products. The statutory authority for the proposed rulemaking is discussed in section IV of this document.

The industry primarily affected by the rescission of essential-use designations would be manufacturers of pharmaceutical preparations (Ref. 11, SIC 2834). Census data indicate that more than 92 percent of the approximately 700 manufacturing establishments and 87 percent of the 650 firms in this industry have fewer than 500 employees. The Small Business Administration (SBA) considers firms with fewer than 750 employees in this sector to be small, but census size categories do not correspond to the SBA designation. Nevertheless, when the procedures of this proposed regulation are implemented, the major impact would likely be incurred by fewer than five small manufacturers of generic products and even fewer small manufacturers of branded products.

Table 1 of this document shows that seven drug substances will be eligible for generic competition in the next several years. However, even in the absence of any FDA decision, many of these drug substances are unlikely to attract generic competition because of their relatively small market share and the knowledge that ODS's are to be removed from the market. In fact, several drug substances that have lost market exclusivity have not been subject to generic competition.

FDA notes that metered-dose steroid human drugs for nasal inhalation are manufactured by four manufacturers, none of whom are small. Therefore, FDA does not expect its proposal to remove the essential-use designation for metered-dose steroid human drugs for nasal inhalation to have a significant impact on a substantial number of small entities.

FDA does not expect significant impacts on wholesalers of pharmaceutical products (Ref. 11, SIC 5122) or retail pharmacies (Ref. 11, SIC 5912) because only a few of the thousands of pharmaceutical products sold by these firms is likely to be affected.

3. Analysis of Alternatives

FDA examined several alternatives to the proposed rule. First, FDA considered denying new essential-use designations but allowing currently exempted drug products to continue to use ODS's. This alternative would continue the availability of current therapies at no additional transfer of costs. However, there would be no incentive to reformulate products. Thus, this alternative would not meet the environmental requirement to eliminate the use of ODS's.

Next, FDA considered allowing essential-use designations for all CFC–MDI's to remain in place until a specific time. However, this alternative imposes a risk of significant market disruption when products are removed. FDA preliminarily estimated that disruption of therapies and additional costs of shortages could cost almost $1 billion. In addition, allocations of ODS's are not guaranteed. The United States must seek and be granted allocations through procedures established by the Montreal Protocol. As part of those procedures, the United States has committed to a yearly examination of essential-uses.

FDA also considered removing essential-use designations for all drug products within a therapeutic class as soon as any two active moieties within the class were available in non-ODS formulations. Defining alternative therapies to include all active moieties within a therapeutic class would hasten the removal of ODS's from the environment. However, FDA rejected

this alternative because of concerns about the ability of a few products to replace all products within a therapeutic class.

Another option would have been for the United States to remove essential-use designations for products on a regular basis or by reduction in CFC allocations. FDA is not encouraging selection of this option because there would be inadequate consideration of the public health impact of essential-use designations.

D. Conclusion

This analysis examined the impact of FDA's proposed rule to set the conditions and standards for determining the essentiality of using ODS's in MDI's and to remove the essential-use designations for metered-dose steroid human drugs for nasal inhalation. FDA believes that this rule would ensure adequate product availability without jeopardizing the desired therapeutic outcomes associated with the affected products. Also, the agency finds that its rule would impose nominal net societal costs, although FDA recognizes that removing essential-use designations for products for the treatment of asthma and COPD could generate substantial losses and gains for particular sectors of the economy. As each essential-use removal for such products would be made through notice-and-comment rulemaking, FDA would examine the particular impact of each essential-use designation at the time of the specific proposal.

TABLE 1.—DESCRIPTION OF THE AFFECTED DRUG SUBSTANCE (AS OF SEPTEMBER 1998)[1]

Drug Substance in MDI	Generic Available?	Number Distributed Annually (millions)	Approximate Market Share (percent)	Off Patent Date
Albuterol	Yes	48.80[2]	40.5	Off
Beclomethasone	No	21.31	17.7	December 1999
Ipratropium	No	13.47	11.2	Off
Triamcinolone	No	9.26	7.7	October 1999
Salmeterol	No	6.84	5.7	January 2012
Flunisolide	No	4.45	3.7	June 2007
Fluticasone	No	3.37	2.8	November 2003
Albuterol/Ipratropium	No	2.15	1.8	June 2015
Pirbuterol	No	2.07	1.7	May 2004
Metaproterenol	No	1.52	1.3	Off
Cromolyn	No	1.47	1.2	September 2000
Nedocromil	No	0.87	0.7	October 2006
Bitolerol	No	0.12	0.1	Off
Isoetharine	No	0.07	0.1	Off
Terbutaline	No	0.02	0.0	Off
Total		115.79	96.2[3]	

[1] Source: FDA CDER data and *Approved Therapeutic Drug Products*, 19th ed.
[2] Including 34.96 million generic and relabeled prescriptions.
[3] Percentages do not add to 100 percent because data are not available for epinephrine and isoproterenol.

VIII. The Paperwork Reduction Act of 1995

The proposed rule does not require information collections subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Section 2.125(f) provides that a person may seek to add or remove an essential use listed under § 2.125(e) by filing a petition under part 10 (21 CFR part 10). Section 10.30(b) requires that a petitioner submit to the agency a statement of grounds, including the factual and legal grounds on which the petitioner relies. Section 2.125(f) describes the factual grounds necessary to document a petition to add or remove an essential use, as required by § 10.30(b). The burden hours required to provide the factual grounds for a petition have been calculated under § 10.30 and have been approved under OMB control No. 0910–0183, which expires on June 30, 2000.

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. ICF Inc., *Regulatory Impact Analysis: Compliance with Section 604 of the Clean Air Act for the Phaseout of Ozone Depleting Chemicals*, ch. 6, July 1, 1992.

2. U.S. National Center for Health Statistics, Vital and Health Statistics, Series 10, No. 193, 1996.

3. Caves, R. E. et al., ''Patent Expiration, Entry, and Competition in the U.S. Pharmaceutical Industry,'' in ''Brookings Papers on Economic Activity: Microeconomics,'' edited by M. N. Brady, pp. 1–66, 1991.

4. ''Glaxo Ventolin Evohaler U.K. Launch Stresses Consistency With Predecessor,'' *Pink Sheet*, vol. 60:37, 1998.

5. Grabowski, H. G., and J. M. Vernon, ''Brand Loyalty, Entry, and Price Competition in Pharmaceuticals After the 1984 Drug Act,'' *Journal of Law and Economics*, 35:10(331–350), 1992.

6. Wiggins, S., and R. Maness, ''Price Competition in Pharmaceutical Markets,'' PERC Working Paper No. 9409, Texas A&M University, Economics Department, 1993.

7. Ellison, S. F. et al., ''Characteristics of Demand for Pharmaceutical Products: An Examination of Four Cephalosporins,'' *RAND Journal of Economics*, 28:3(426–446), 1997.

8. Frank, R. G., and D. S. Salkever, ''Generic Entry and the Pricing of Pharmaceuticals,'' *Journal of Economics and Management Strategy*, 6:1(75–90), 1997.

9. Grabowski, H. G., and J. M. Vernon, ''Longer Patents for Increased Generic Competition in the United States: The Waxman-Hatch Act After One Decade,'' *PharmacoEconomics*, 10 (Suppl. 2):110–123; 1996.

10. U.S. Congressional Budget Office, *How Increased Competition From Generic Drugs Has Affected Prices and Returns in the Pharmaceutical Industry*, 1998.

11. U.S. Small Business Administration, *Table of Size Standards*, 1996.

List of Subjects in 21 CFR Part 2

Administrative practice and procedure, Cosmetics, Devices, Drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Clean Air Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 2 be amended as follows:

PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

1. The authority citation for 21 CFR part 2 is revised to read as follows:

Authority: 15 U.S.C. 402, 409; 21 U.S.C. 321, 331, 335, 342, 343, 346a, 348, 351, 352, 355, 360b, 361, 362, 371, 372, 374; 42 U.S.C. 7671 *et seq.*

2. Section 2.125 is revised to read as follows:

§ 2.125 Use of ozone-depleting substances in foods, drugs, devices, or cosmetics.

(a) As used in this section, *ozone-depleting substance* (ODS) means any class I substance as defined in 40 CFR part 82, appendix A to subpart A, or class II substance as defined in 40 CFR part 82, appendix B to subpart A.

(b) Except as provided in paragraph (c) of this section, any food, drug, device, or cosmetic that is, consists in part of, or is contained in, an aerosol product or other pressurized dispenser that releases an ODS is not an essential use of the ODS under the Clean Air Act.

(c) A food, drug, device, or cosmetic that is, consists in part of, or is contained in, an aerosol product or other pressurized dispenser that releases an ODS is an essential use of the ODS under the Clean Air Act if paragraph (e) of this section specifies the use of that product as essential. For drugs, including biologics and animal drugs, and for devices, an investigational application or an approved marketing application must be in effect, as applicable.

(d) [Reserved]

(e) The use of ODS's in the following products is essential:

(1) *Metered-dose corticosteroid human drugs for oral inhalation*. Oral pressurized metered-dose inhalers containing the following active moieties:

(i) Beclomethasone.

(ii) Dexamethasone.

(iii) Flunisolide.

(iv) Fluticasone.

(v) Triamcinolone.

(2) *Metered-dose short-acting adrenergic bronchodilator human drugs for oral inhalation*. Oral pressurized metered-dose inhalers containing the following active moieties:

(i) Albuterol.

(ii) Bitolterol.

(iii) Metaproterenol.

(iv) Pirbuterol.

(v) Terbutaline.

(vi) Epinephrine.

(3) [Reserved]

(4) *Other essential uses*. (i) Metered-dose salmeterol drug products administered by oral inhalation for use in humans.

(ii) Metered-dose ergotamine tartrate drug products administered by oral inhalation for use in humans.

(iii) Anesthetic drugs for topical use on accessible mucous membranes of humans where a cannula is used for application.

(iv) Metered-dose cromolyn sodium human drugs administered by oral inhalation.

(v) Metered-dose ipratropium bromide for oral inhalation.

(vi) Metered-dose atropine sulfate aerosol human drugs administered by oral inhalation.

(vii) Metered-dose nedocromil sodium human drugs administered by oral inhalation.

(viii) Metered-dose ipratropium bromide and albuterol sulfate, in combination, administered by oral inhalation for human use.

(ix) Sterile aerosol talc administered intrapleurally by thoracoscopy for human use.

(f) Any person may file a petition under part 10 of this chapter to amend paragraph (e) of this section to add or remove an essential use.

(1) If the petition is to add use of a noninvestigational product, the petitioner must submit compelling evidence that:

(i) Substantial technical barriers exist to formulating the product without ODS's;

(ii) The product will provide an unavailable important public health benefit; and

(iii) Use of the product does not release cumulatively significant amounts of ODS's into the atmosphere or the release is warranted in view of the unavailable important public health benefit.

(2) If the petition is to add use of an investigational product, the petitioner must submit compelling evidence that:

(i) Substantial technical barriers exist to formulating the investigational product without ODS's;

(ii) A high probability exists that the investigational product will provide an unavailable important public health benefit; and

(iii) Use of the investigational product does not release cumulatively significant amounts of ODS's into the atmosphere or the release is warranted in view of the high probability of an unavailable important public health benefit.

(g) FDA will use notice-and-comment rulemaking to remove the essential-use listing of a product in paragraph (e) of this section if the product meets any one of the following criteria:

(1) The product using an ODS is no longer being marketed; or

(2) After January 1, 2005, the product is not available without an ODS and FDA determines that the product no longer meets the criteria in paragraph (f) of this section after consultation with a relevant advisory committee(s) and after an open public meeting; or

(3) For individual active moieties marketed as ODS products and represented by one new drug application (NDA) and one strength:

(i) At least one non-ODS product with the same active moiety is marketed with the same route of administration, for the same indication, and with approximately the same level of convenience of use as the ODS product containing that active moiety;

(ii) Supplies and production capacity for the non-ODS product(s) exist or will exist at levels sufficient to meet patient need;

(iii) At least 1 year of U.S. postmarketing use data is available for the non-ODS product(s); and

(iv) Patients who medically required the ODS product are adequately served by the non-ODS product(s) containing that active moiety and other available products; or

(4) For individual active moieties marketed as ODS products and represented by two or more NDA's or marketed in multiple distinct strengths;

(i) At least two non-ODS products that contain the same active moiety are being marketed with the same route of delivery, for the same indication, and with approximately the same level of convenience of use as the ODS products; and

(ii) The requirements of paragraphs (g)(3)(ii), (g)(3)(iii), and (g)(3)(iv) of this section are met.

Dated: August 19, 1999.

Jane E. Henney,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 99–22887 Filed 8–30–99; 12:40 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Chapter I

[FHWA Docket No. FHWA–99–4970]

RIN 2125–AE54

Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the Fish and Wildlife Service and the Refuge Roads Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); request for comments.

SUMMARY: The FHWA seeks public comment concerning the development of transportation planning procedures affecting Federal land management agencies and management systems pertaining to pavement, bridge, safety and congestion for roads funded under the Federal lands highway program (FLHP). This ANPRM requests comments on the advisability of the FHWA, in consultation with the Fish and Wildlife Service (FWS), to develop a rule to meet the transportation planning and management systems requirements of the Transportation Equity Act for the 21st Century (TEA–21) pertaining to the FWS and the refuge roads program. This ANPRM also requests comments on a number of specific issues concerning transportation planning procedures and management systems pertaining to the FWS and the refuge roads program. Section 1115(d) of the TEA–21 requires the Secretary of Transportation, in consultation with appropriate Federal land management agencies, to develop transportation planning procedures that are consistent with the metropolitan and statewide transportation planning processes required under 23 U.S.C. 134 and 135. The TEA–21 also requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the FLHP. The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads, and Indian reservation roads. The FHWA was delegated the authority by the Secretary to serve as the lead agency within the DOT to implement the FLHP.

DATES: Comments must be received on or before November 1, 1999.

ADDRESSES: Your signed, written comments must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Schneider, Federal Lands Highway Office, HFPD–2, (202) 366–6799; or Ms. Grace Reidy, Office of the Chief Counsel, HCC–32, (202) 366–6226, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

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Background

Section 1115(d) of TEA–21 (Pub. L. 105–178, 112 Stat. 107, 156 (1998)) amended 23 U.S.C. 204. Section 204 now requires the development of transportation planning procedures affecting Federal land management agencies and management systems pertaining to roads funded under the FLHP. Section 1115(d)(1) of TEA–21 requires the Secretary of Transportation, in consultation with the Secretary of each appropriate Federal land management agency, to develop transportation planning procedures that are consistent with the metropolitan and statewide transportation planning processes required under 23 U.S.C. 134 and 135. Section 1115(d)(1) of TEA–21 also requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency, to the extent appropriate, to develop by rule safety, bridge, pavement and congestion management systems for roads funded under the FLHP. The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads and Indian reservation roads. The FHWA has the lead for the Department of Transportation in these efforts.

The FHWA is contemplating developing four rules to meet the requirements of TEA–21. Under this approach, separate rules would be developed pertaining to the National Park Service and the park roads and parkways program; the FWS and the refuge roads program; the Bureau of Indian Affairs and the Indian reservations roads program; and the Forest Service and the forest highway program. The FHWA would consider developing a ''separate rule'' pertaining to each agency and program area because the ownership, jurisdictional, and maintenance responsibilities for the roads in each program area are significantly different; therefore, we anticipate that each rule would be moderately different. The variances between the rules would allow for the significant differences in the ownership, jurisdictional, and maintenance responsibilities that the agencies exercise over the subject roadways to be addressed in the rules. To ensure uniformity between the four separate rules, however, the FHWA would coordinate the development of each rule, ensuring that similar text and format is contained in each of the rules. This ANPRM requests comments on the proposal for the FHWA, in consultation with the FWS, to develop a ''separate rule'' to meet the transportation planning and management systems requirements of TEA–21 pertaining to the FWS and the refuge roads program. Additionally, this ANPRM requests comments on the alternative of developing ''one rule'' that would apply to all four agencies and programs. Finally, this ANPRM also requests comments on a number of other specific issues concerning transportation planning procedures and management systems pertaining to the FWS and the refuge roads program. The specific issues are listed, as follows:

- What types of institutions or coordination efforts are needed to coordinate an FWS unit's transportation planning with State, local and tribal governments?
- How should an FWS unit's transportation planning and development be coordinated with the metropolitan and statewide planning processes?
- How should the transportation planning process address the need to minimize transportation's adverse impacts on fish and wildlife areas owned and maintained by the FWS and on surrounding areas?
- How should the transportation planning procedures address the accommodation of various modes of transportation in FWS units?
- How should the management systems requirements be addressed?

Refuge roads are public roads that provide access to or within a unit of the National Wildlife Refuge System and for which the title and maintenance responsibilities are vested in the United States. A vast majority of the refuge roads are owned and maintained by the FWS. Changes to the refuge transportation system may affect the

surrounding transportation system; and changes to the surrounding transportation system may significantly affect the refuge transportation system. Therefore, transportation planning procedures would be developed to provide guidance for systematizing transportation planning within the refuges and to coordinate their transportation planning efforts with other agencies and organizations. Management systems would be developed that support the transportation planning efforts.

To ensure that the full range of issues related to this anticipated rulemaking process are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action should be directed to the FHWA at the address provided above. Likewise, in separate advance notices of proposed rulemaking published elsewhere in today's **Federal Register**, FHWA Docket No. FHWA–99–4967, *Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the National Park Service and the Park Roads and Parkways Program,* FHWA Docket No. FHWA–99–4968, *Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the Bureau of Indian Affairs and the Indian Reservation Roads Program,* FHWA Docket No. FHWA–99–4969, *Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the Forest Service and the Forest Highways Program,* the FHWA is seeking public comment on the propriety of developing transportation planning procedures affecting other Federal land management agencies and management systems pertaining to other roads funded under the FLHP.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FHWA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. In addition to late comments, the FHWA will also continue to file, in the docket, relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that the contemplated rule would be a significant regulatory action within the meaning of Executive Order 12866 and the regulatory policies and procedures of the Department of Transportation because of the substantial public interest anticipated in the transportation facilities on Fish and Wildlife system units. There is also substantial interest by Federal, State, regional, local and tribal governments, and private groups due to the necessary coordination with these organizations when transportation planning is being performed for transportation facilities within and approaching the Fish and Wildlife system units.

It is anticipated that the economic impact of any action taken in this rulemaking process will be minimal. Any changes are not anticipated to adversely affect, in a material way, any sector of the economy. In addition, any changes are not likely to interfere with any action taken or planned by another agency or to materially alter the budgetary impact of any entitlement, grants, user fees, or loan programs.

Based upon the information received in response to this action, the FHWA intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information, and data are solicited on the economic impact of the changes described in this document or any alternative proposal submitted.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), and based upon the information received in response to this ANPRM, the FHWA will evaluate the effects of any action proposed on small entities. This ANPRM will only generate comments and discussions on transportation planning procedures and management systems pertaining to pavement, bridge, safety, and congestion for FLHP-funded roads in accordance with existing laws, regulations, and guidance. If the final rule contemplated in this ANPRM is promulgated, States may be affected by the rule due to the possibility of expending additional resources during the transportation planning process, although it is anticipated that any additional expenditures would be minor. Because the States are not included in the definition of ''small entity'' set forth in 5 U.S.C. 601, we do not anticipate that any transportation planning procedures or management systems requirements would have substantial economic impact on small entities within the meaning of the Regulatory Flexibility Act. We encourage commenters to evaluate any options addressed here with regard to the potential for impact, however, and to formulate their comments accordingly.

Unfunded Mandates Reform Act of 1995

This ANPRM would not impose a Federal mandate resulting in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector.

Executive Order 12612 (Federalism Assessment)

Any action that might be proposed in subsequent stages of this proceeding will be analyzed in accordance with the principles and criteria contained in Executive Order 12612. Given the nature of the issues involved in this proceeding, the FHWA anticipates that any action contemplated will not have sufficient federalism implications to warrant the preparation of a federalism assessment. Nor does the FHWA anticipate that any action taken would preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. We encourage commenters to consider these issues, however, as well as matters concerning any costs or burdens that might be imposed on the States as a result of actions considered here.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Accordingly, the FHWA solicits comment on this issue.

Paperwork Reduction Act

Any action that might be contemplated in subsequent phases of this proceeding is not likely to involve a collection of information requirement for the purposes of the Paperwork

Reduction Act of 1995, 44 U.S.C. 3501—3520, or information collection requirements not already approved for transportation planning and management systems. The FHWA, however, will evaluate any actions that might be considered in accordance with the terms of the Paperwork Reduction Act.

National Environmental Policy Act

The agency also will analyze any action that might be proposed for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) to assess whether there would be any affect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Chapter I

Bridge and congestion management systems, Bridges, Defense access roads, Forest highways, Highways and roads, Metropolitan transportation planning, Pavement, Safety, Statewide transportation planning, and Traffic monitoring systems.

(Authority: 23 U.S.C. 134, 135, 204, and 315; sec. 1115, Pub. L. 105–178, 112 Stat. 107 (1998); 49 CFR 1.48.)

Issued on: August 25,1999.

Gloria J. Jeff,

Federal Highway Deputy Administrator.

[FR Doc. 99–22703 Filed 8–31–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Chapter I

[FHWA Docket No. FHWA–99–4969]

RIN 2125–AE55

Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the Forest Service and the Forest Highway Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); request for comments.

SUMMARY: The FHWA seeks public comment concerning the development of transportation planning procedures affecting Federal land management agencies and management systems pertaining to pavement, bridge, safety, and congestion for roads funded under the Federal lands highway program (FLHP). This ANPRM requests comments on the advisability of the FHWA, in consultation with the Forest Service (FS), to develop a rule to meet the transportation planning and management systems requirements of the Transportation Equity Act for the 21st Century (TEA–21) pertaining to the FS and the forest highway program. This ANPRM also requests comments on a number of specific issues concerning transportation planning procedures and management systems pertaining to the FS and the forest highway program. Section 1115(d) of the TEA–21 requires the Secretary of Transportation, in consultation with appropriate Federal land management agencies, to develop transportation planning procedures that are consistent with the metropolitan and statewide transportation planning processes required under 23 U.S.C. 134 and 135. The TEA–21 also requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the FLHP. The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads, and Indian reservation roads. The FHWA was delegated the authority by the Secretary to serve as the lead agency within the DOT to implement the FLHP.

DATES: Comments must be received on or before November 1, 1999.

ADDRESSES: Your signed, written comments must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Schneider, Federal Lands Highway Office, HFPD–2, (202) 366–6799; or Ms. Grace Reidy, Office of the Chief Counsel, HCC–32, (202) 366–6226, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

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Background

Section 1115(d) of TEA–21 (Pub. L. 105–178, 112 Stat 107, 156 (1998)) amended 23 U.S.C. 204. Section 204 now requires the development of uniform transportation planning procedures affecting Federal land management agencies and management systems pertaining to roads funded under the FLHP. Section 1115(d)(1) of TEA–21 requires the Secretary of Transportation, in consultation with the Secretary of each appropriate Federal land management agency, to develop transportation planning procedures that are consistent with the metropolitan and statewide transportation planning processes required under 23 U.S.C. 134 and 135. Section 1115(d)(1) of TEA–21 also requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency, to the extent appropriate, to develop safety, bridge, pavement and congestion management systems for roads funded under the FLHP. The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads and Indian reservation roads. The FHWA has the lead for the Department of Transportation in these efforts.

The FHWA is contemplating developing four rules to meet the requirements of TEA–21. Under this approach, separate rules would be developed pertaining to the National Park Service and the park roads and parkways program; the FWS and the refuge roads program; the Bureau of Indian Affairs and the Indian reservations roads program; and the Forest Service and the forest highway

program. The FHWA would consider developing a ''separate rule'' pertaining to each agency and program area because the ownership, jurisdictional, and maintenance responsibilities for the roads in each program area are significantly different; therefore, we anticipate that each rule would be moderately different. The variances between the rules would allow for the significant differences in the ownership, jurisdictional, and maintenance responsibilities that the agencies exercise over the subject roadways to be addressed in the rules. To ensure uniformity between the four separate rules, however, the FHWA would coordinate the development of each rule, ensuring that similar text and format is contained in each of the rules. This ANPRM requests comments on the proposal for the FHWA, in consultation with the FS, to develop a ''separate rule'' to meet the transportation planning and management systems requirements of TEA–21 pertaining to the FS and the forest highway program. Additionally, this ANPRM requests comments on the alternative of developing ''one rule'' that would apply to all four agencies and programs. Finally, this ANPRM also requests comments on a number of other specific issues concerning transportation planning procedures and management systems pertaining to the FS and the forest highway program. The specific issues are listed, as follows:

- What types of institutions or efforts are needed to coordinate an forest's transportation planning with State, local and tribal governments?
- How should a forest's transportation planning and development be coordinated with the metropolitan and statewide planning processes?
- How should the transportation planning process address the need to minimize transportation's adverse impacts on forests and surrounding areas?
- How should the transportation planning procedures address the accommodation of various modes of transportation in forests?
- How should the management systems requirements be addressed?

Forest highways are under the jurisdiction of, and maintained by, a public authority and open to public travel. A majority of forest highways are under the jurisdiction of, and maintained by, State departments of transportation or county or township authorities. Under most circumstances, the State department of transportation, the FHWA and the FS work together to perform transportation planning for this roadway network. Therefore, transportation planning procedures would be developed that provide guidance for performing and systematizing coordinated transportation planning among these agencies. Management systems would be developed that support the transportation planning efforts.

To ensure that the full range of issues related to this anticipated rulemaking process are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action should be directed to the FHWA at the address provided above. Likewise, in separate advance notices of proposed rulemaking published elsewhere in today's **Federal Register**, FHWA Docket No. FHWA–99–4967, *Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the National Park Service and the Park Roads and Parkways Program*, FHWA Docket No. FHWA–99–4968, *Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the Bureau of Indian Affairs and the Indian Reservation Roads Program, FHWA Docket No. FHWA–99–4970, Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the Fish and Wildlife Service and the Refuge Roads Program*, the FHWA is seeking public comment on the propriety of developing transportation planning procedures affecting other Federal land management agencies and management systems pertaining to other roads funded under the FLHP.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FHWA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. In addition to late comments, the FHWA will also continue to file, in the docket, relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that the contemplated rule would be a significant regulatory action within the meaning of Executive Order 12866 and the regulatory policies and procedures of the Department of Transportation because of the substantial public interest anticipated in the transportation facilities within and approaching national forests. There is also substantial interest by Federal, State, regional, local and tribal governments, and private groups due to the necessary coordination with these organizations when transportation planning is being performed for transportation facilities within and approaching the national forests.

It is anticipated that the economic impact of any action taken in this rulemaking process will be minimal. Any changes are not anticipated to adversely affect, in a material way, any sector of the economy. In addition, any changes are not likely to interfere with any action taken or planned by another agency or to materially alter the budgetary impact of any entitlement, grants, user fees, or loan programs.

Based upon the information received in response to this action, the FHWA intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information, and data are solicited on the economic impact of the changes described in this document or any alternative proposal submitted.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), and based on the information received in response to this ANPRM, the FHWA will evaluate the effects of any action proposed on small entities. This ANPRM will only generate comments and discussions on transportation planning procedures and management systems pertaining to pavement, bridge, safety, and congestion for FLHP-funded roads in accordance with existing laws, regulations, and guidance. If the final rule contemplated in this ANPRM is promulgated, States may be affected by the rule due to the possibility of expending additional resources during the transportation planning process, although it is anticipated that any additional expenditures would be minor. Because the States are not included in the definition of ''small entity'' set forth in 5 U.S.C. 601, we do not anticipate that any transportation planning procedures or management

systems requirements would have substantial economic impact on small entities within the meaning of the Regulatory Flexibility Act. We encourage commenters to evaluate any options addressed here with regard to the potential for impact, however, and to formulate their comments accordingly.

Unfunded Mandates Reform Act of 1995

This ANPRM would not impose a Federal mandate resulting in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector.

Executive Order 12612 (Federalism Assessment)

Any action that might be proposed in subsequent stages of this proceeding will be analyzed in accordance with the principles and criteria contained in Executive Order 12612. Given the nature of the issues involved in this proceeding, the FHWA anticipates that any action contemplated will not have sufficient federalism implications to warrant the preparation of a federalism assessment. Nor does the FHWA anticipate that any action taken would preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. We encourage commenters to consider these issues, however, as well as matters concerning any costs or burdens that might be imposed on the States as a result of actions considered here.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Accordingly, the FHWA solicits comment on this issue.

Paperwork Reduction Act

Any action that might be contemplated in subsequent phases of this proceeding is not likely to involve a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501—3520, or information collection requirements not already approved for transportation planning and management systems. The FHWA, however, will evaluate any actions that might be considered in accordance with the terms of the Paperwork Reduction Act.

National Environmental Policy Act

The agency also will analyze any action that might be proposed for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321—4347) to assess whether there would be any affect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Chapter I

Bridge and congestion management systems, Bridges, Defense access roads, Forest highways, Highways and Roads, Metropolitan transportation planning, Pavement, Safety, Statewide transportation planning, and Traffic monitoring systems.

(Authority: 23 U.S.C. 134, 135, 204, and 315; sec. 1115, Pub. L. 105–178, 112 Stat. 107 (1998); 49 CFR 1.48.)

Issued on: August 25, 1999.

Gloria J. Jeff,

Federal Highway Deputy Administrator.

[FR Doc. 99–22702 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Chapter I

[FHWA Docket No. FHWA–99–4968]

RIN 2125–AE53

Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the Bureau of Indian Affairs and the Indian Reservation Roads Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); request for comments.

SUMMARY: The FHWA seeks public comment concerning the development of transportation planning procedures affecting Federal land management agencies and management systems pertaining to pavement, bridge, safety and congestion for roads funded under the Federal lands highway program (FLHP). This ANPRM requests comments on the advisability of the FHWA, in consultation with the Bureau of Indian Affairs (BIA), to develop a rule to meet the transportation planning and management systems requirements of the Transportation Equity Act for the 21st Century (TEA–21) pertaining to the BIA and the Indian reservation roads program. This ANPRM also requests comments on a number of specific issues concerning transportation planning procedures and management systems pertaining to the BIA and the Indian reservation roads program. Section 1115(d) of the TEA–21 requires the Secretary of Transportation, in consultation with appropriate Federal land management agencies, to develop transportation planning procedures that are consistent with the metropolitan and statewide transportation planning processes required under 23 U.S.C. 134 and 135. The TEA–21 also requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the FLHP. The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads, and Indian reservation roads. The FHWA was delegated the authority by the Secretary to serve as the lead agency within the DOT to implement the FLHP.

DATES: Comments must be received on or before November 1, 1999.

ADDRESSES: Your signed, written comments must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Schneider, Federal Lands Highway Office, HFPD–2, (202) 366–6799; or Ms. Grace Reidy, Office of the Chief Counsel, HCC–32, (202) 366–6226, Federal Highway Administration, 400

Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara*.

Background

Section 1115(d) of TEA–21 (Pub. L. 105–178, 112 Stat. 107, 156 (1998)) amended 23 U.S.C. 204. Section 204 now requires the development of uniform transportation planning procedures affecting Federal land management agencies and management systems pertaining to roads funded under the FLHP. Section 1115(d)(1) of TEA–21 requires the Secretary of Transportation, in consultation with the Secretary of each appropriate Federal land management agency, to develop transportation planning procedures that are consistent with the metropolitan and statewide transportation planning processes required under 23 U.S.C. 134 and 135. Section 1115(d)(1) of TEA–21 also requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency, to the extent appropriate, to develop safety, bridge, pavement and congestion management systems for roads funded under the FLHP. The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads and Indian reservation roads. The FHWA has the lead for the Department of Transportation in these efforts.

The FHWA is contemplating developing four rules to meet the requirements of TEA–21. Under this approach, separate rules would be developed pertaining to the National Park Service and the park roads and parkways program; the FWS and the refuge roads program; the Bureau of Indian Affairs and the Indian reservations roads program; and the Forest Service and the forest highway program. The FHWA would consider developing a ''separate rule'' pertaining to each agency and program area because the ownership, jurisdictional, and maintenance responsibilities for the roads in each program area are significantly different; therefore, we anticipate that each rule would be moderately different. The variances between the rules would allow for the significant differences in the ownership, jurisdictional, and maintenance responsibilities that the agencies exercise over the subject roadways to be addressed in the rules. To ensure uniformity between the four separate rules, however, the FHWA would coordinate the development of each rule, ensuring that similar text and format is contained in each of the rules. This ANPRM requests comments on the proposal for the FHWA, in consultation with the BIA, to develop a ''separate rule'' to meet the transportation planning and management systems requirements of TEA–21 pertaining to the BIA and the Indian reservation roads program. Additionally, this ANPRM requests comments on the alternative of developing ''one rule'' that would apply to all four agencies and programs. Finally, this ANPRM also requests comments on a number of other specific issues concerning transportation planning procedures and management systems pertaining to the BIA and the Indian reservation roads program. The specific issues are listed, as follows:

- What types of institutions or efforts are needed to coordinate an Indian reservation's or Indian trust land's or restricted Indian land's transportation planning with State, local and tribal governments?
- How should an Indian reservation's or Indian trust land's or restricted Indian land's transportation planning and development be coordinated with the metropolitan and statewide planning processes?
- How should the transportation planning process address the need to minimize transportation's adverse impacts on Indian reservations or Indian trust lands or restricted Indian lands and surrounding areas?
- How should the transportation planning procedures address the accommodation of various modes of transportation in Indian reservations or Indian trust lands or restricted Indian lands?
- How should the management systems requirements be addressed?

Indian reservation roads are public roads that are located within or provide access to an Indian reservation, or Indian trust land, or restricted Indian land which is not subject to fee title alienation without approval of the Federal Government, or Indian and Alaska Native villages, groups, or communities in which reside Indians or Alaskan Natives, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians. Indian reservation roads are under the jurisdiction of, and maintained by, State departments of transportation, local authorities, the BIA or tribal governments. Transportation planning for this roadway network is performed by numerous public entities depending upon ownership, liability, and construction and maintenance agreements of the roadways. Therefore, transportation planning procedures would be developed that provide guidance for performing and systematizing coordinated transportation planning for this roadway network. Management systems would be developed that support the transportation planning efforts.

To ensure that the full range of issues related to this anticipated rulemaking process are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action should be directed to the FHWA at the address provided above. Likewise, in separate advance notices of proposed rulemaking published elsewhere in today's **Federal Register**, FHWA Docket No. FHWA–99–4967, *Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the National Park Service and the Park Roads and Parkways Program*, FHWA Docket No. FHWA–99–4969, *Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the Forest Service and the Forest Highways Program*, FHWA Docket No. FHWA–99–4970, *Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the Fish and Wildlife Service and the Refuge Roads Program*, the FHWA is seeking public comment on the propriety of developing transportation planning procedures affecting other Federal land management agencies and management systems pertaining to other roads funded under the FLHP.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in

the docket room at the above address. The FHWA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. In addition to late comments, the FHWA will also continue to file, in the docket, relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that the contemplated rule would be a significant regulatory action within the meaning of Executive Order 12866 and the regulatory policies and procedures of the Department of Transportation because of the substantial public interest anticipated in the transportation facilities on Indian reservations or Indian trust lands or restricted Indian lands which are not subject to fee title alienation without approval of the Federal Government, or Indian and Alaska Native villages, groups, or communities in which reside Indians or Alaskan Natives, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians. There is also substantial interest by Federal, State, regional, local and tribal governments, and private groups due to the necessary coordination with these organizations when transportation planning is being performed for transportation facilities within and approaching Indian reservations or Indian trust lands or restricted Indian lands which are not subject to fee title alienation without approval of the Federal Government, or Indian and Alaska Native villages, groups, or communities in which reside Indians or Alaskan Natives, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians.

It is anticipated that the economic impact of any action taken in this rulemaking process will be minimal. Any changes are not anticipated to adversely affect, in a material way, any sector of the economy. In addition, any changes are not likely to interfere with any action taken or planned by another agency or to materially alter the budgetary impact of any entitlement, grants, user fees, or loan programs.

Based upon the information received in response to this action, the FHWA intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information, and data are solicited on the economic impact of the changes described in this document or any alternative proposal submitted.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), and based upon the information received in response to this ANPRM, the FHWA will evaluate the effects of any action proposed on small entities. This ANPRM will only generate comments and discussions on transportation planning procedures and management systems pertaining to pavement, bridge, safety, and congestion for FLHP-funded roads in accordance with existing laws, regulations, and guidance. If the final rule contemplated in this ANPRM is promulgated, States may be affected by the rule due to the possibility of expending additional resources during the transportation planning process, although it is anticipated that any additional expenditures would be minor. Because the States are not included in the definition of ''small entity'' set forth in 5 U.S.C. 601, we do not anticipate that any transportation planning procedures or management systems requirements would have substantial economic impact on small entities within the meaning of the Regulatory Flexibility Act. We encourage commenters to evaluate any options addressed here with regard to the potential for impact, however, and to formulate their comments accordingly.

Unfunded Mandates Reform Act of 1995

This ANPRM would not impose a Federal mandate resulting in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector.

Executive Order 12612 (Federalism Assessment)

Any action that might be proposed in subsequent stages of this proceeding will be analyzed in accordance with the principles and criteria contained in Executive Order 12612. Given the nature of the issues involved in this proceeding, the FHWA anticipates that any action contemplated will not have sufficient federalism implications to warrant the preparation of a federalism assessment. Nor does the FHWA anticipate that any action taken would preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. We encourage commenters to consider these issues, however, as well as matters concerning any costs or burdens that might be imposed on the States as a result of actions considered here.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Accordingly, the FHWA solicits comment on this issue.

Paperwork Reduction Act

Any action that might be contemplated in subsequent phases of this proceeding is not likely to involve a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, or information collection requirements not already approved for transportation planning and management systems. The FHWA, however, will evaluate any actions that might be considered in accordance with the terms of the Paperwork Reduction Act.

National Environmental Policy Act

The agency also will analyze any action that might be proposed for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) to assess whether there would be any effect on the quality of the environment.

Regulation Identification Number

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List of Subjects in 23 CFR Chapter I

Bridge and congestion management systems, Bridges, Defense access roads, Forest highways, Highways and roads, Metropolitan transportation planning, Pavement, Safety, Statewide

transportation planning, and Traffic monitoring systems.

(Authority: 23 U.S.C. 134, 135, 204, and 315; sec. 1115, Pub.L. 105–178, 112 Stat. 107 (1998); 49 CFR 1.48.)

Issued on: August 25, 1999.

Gloria J. Jeff,

Federal Highway Deputy Administrator.

[FR Doc. 99–22701 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Chapter I

[FHWA Docket No. FHWA–99–4967]

RIN 2125–AE52

Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the National Park Service and the Park Roads and Parkways Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); request for comments.

SUMMARY: The FHWA seeks public comment concerning the development of transportation planning procedures affecting Federal land management agencies and management systems pertaining to pavement, bridge, safety and congestion for roads funded under the Federal lands highway program (FLHP). This ANPRM requests comments on the advisability of the FHWA, in consultation with the National Park Service (NPS), to develop a rule to meet the transportation planning and management systems requirements of the Transportation Equity Act for the 21st Century (TEA–21) pertaining to the NPS and the park roads and parkways program. This ANPRM also requests comments on a number of specific issues concerning transportation planning procedures and management systems pertaining to the NPS and the park roads and parkways program. Section 1115(d) of the TEA–21 requires the Secretary of Transportation, in consultation with appropriate Federal land management agencies, to develop transportation planning procedures that are consistent with the metropolitan and statewide transportation planning processes required under 23 U.S.C. 134 and 135. The TEA–21 also requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the FLHP. The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads, and Indian reservation roads. The FHWA was delegated the authority by the Secretary to serve as the lead agency within the DOT to implement the FLHP.

DATES: Comments must be received on or before November 1, 1999.

ADDRESSES: Your signed, written comments must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Schneider, Federal Lands Highway, HFPD–2, (202) 366–6799; or Ms. Grace Reidy, Office of the Chief Counsel, HCC–32, (202) 366–6226, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

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Background

Section 1115(d) of TEA–21 (Pub. L. 105–178, 112 Stat. 107, 156 (1998)) amended 23 U.S.C. 204. Section 204 now requires the development of uniform transportation planning procedures affecting Federal land management agencies and management systems pertaining to roads funded under the FLHP. Section 1115(d)(1) of TEA–21 requires the Secretary of Transportation, in consultation with the Secretary of each appropriate Federal land management agency, to develop transportation planning procedures that are consistent with the metropolitan and statewide transportation planning processes required under 23 U.S.C. 134 and 135. Section 1115(d)(1) of TEA–21 also requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency, to the extent appropriate, to develop safety, bridge, pavement and congestion management systems for roads funded under the FLHP. The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads and Indian reservation roads. The FHWA has the lead for the Department of Transportation in these efforts.

The FHWA is contemplating developing four rules to meet the requirements of TEA–21. Under this approach, separate rules would be developed pertaining to the National Park Service and the park roads and parkways program; the FWS and the refuge roads program; the Bureau of Indian Affairs and the Indian reservations roads program; and the Forest Service and the forest highway program. The FHWA would consider developing a ''separate rule'' pertaining to each agency and program area because the ownership, jurisdictional, and maintenance responsibilities for the roads in each program area are significantly different; therefore, we anticipate that each rule would be moderately different. The variances between the rules would allow for the significant differences in the ownership, jurisdictional, and maintenance responsibilities that the agencies exercise over the subject roadways to be addressed in the rules. To ensure uniformity between the four separate rules, however, the FHWA would coordinate the development of each rule, ensuring that similar text and format is contained in each of the rules. This ANPRM requests comments on the proposal for the FHWA, in consultation with the NPS, to develop a ''separate rule'' to meet the transportation planning and management systems requirements of TEA–21 pertaining to the NPS and the park roads and parkways program. Additionally, this ANPRM requests comments on the alternative of developing ''one rule'' that would apply to all four agencies and programs. Finally, this ANPRM also requests comments on a number of other specific issues concerning transportation planning procedures and

management systems pertaining to the NPS and the park roads and parkways program. The specific issues are listed, as follows:

- What types of institutions or coordination efforts are needed to coordinate an NPS unit's transportation planning with State, local and tribal governments?
- What kinds of institutions or links are needed to coordinate park transportation circulation planning and access with adjacent affected communities?
- How should an NPS unit's transportation planning and development be coordinated with the metropolitan and statewide planning processes?
- How should the transportation planning process address the need to minimize transportation's adverse impacts on the national parks and surrounding areas?
- How can we minimize adverse community and environmental impacts associated with park transportation circulation systems and access to parks?
- How should the transportation planning procedures address the accommodation of various modes of transportation in NPS units?
- How can other modes of transport, such as transit, biking and walking, be better accommodated?
- How can transportation be planned that allows for the conversion to or integration of multiple occupant vehicles, such as vans, buses or rail as demand for services increases?
- What is the role of peripheral parking?
- How should the management systems requirements be addressed?

Park roads are public roads that are located within, or provide access to, an area in the national park system with title and maintenance responsibilities vested in the United States. Parkways are authorized by an Act of Congress on lands to which title is vested in the United States. A vast majority of park roads and parkways are owned and maintained by the NPS. Many of the NPS field units generate large traffic volumes. Changes to the park units transportation system may significantly affect the surrounding transportation network; and changes to the surrounding transportation network may significantly affect the park units transportation system. Therefore, transportation planning procedures would be developed that provide guidance for systematizing transportation planning within the park units and for coordinating their transportation planning efforts with other agencies and organizations. Management systems would be developed that support the transportation planning efforts.

To ensure that the full range of issues related to this anticipated rulemaking process are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action should be directed to the FHWA at the address provided above. Likewise, in separate advance notices of proposed rulemaking published elsewhere in today's **Federal Register**, FHWA Docket No. FHWA–99–4968, *Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the Bureau of Indian Affairs and the Indian Reservation Roads Program,* FHWA Docket No. FHWA–99–4969, *Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the Forest Service and the Forest Highways Program,* FHWA Docket No. FHWA–99–4970, *Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the Fish and Wildlife Service and the Refuge Roads Program,* the FHWA is seeking public comment on the propriety of developing transportation planning procedures affecting other Federal land management agencies and management systems pertaining to other roads funded under the FLHP.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FHWA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. In addition to late comments, the FHWA will also continue to file, in the docket, relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that the contemplated rule would be a significant regulatory action within the meaning of Executive Order 12866 and under the regulatory policies and procedures of the Department of Transportation because of the substantial public interest anticipated in the transportation facilities of the national park units. There is also substantial interest by Federal, State, regional, local and tribal governments, and private groups due to the necessary coordination with these organizations when transportation planning is being performed for transportation facilities within and approaching the national park units.

It is anticipated that the economic impact of any action taken in this rulemaking process will be minimal. Any changes are not anticipated to adversely affect, in a material way, any sector of the economy. In addition, any changes are not likely to interfere with any action taken or planned by another agency or to materially alter the budgetary impact of any entitlement, grants, user fees, or loan programs.

Based upon the information received in response to this action, the FHWA intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information, and data are solicited on the economic impact of the changes described in this document or any alternative proposal submitted.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), and based upon the information received in response to this ANPRM, the FHWA will evaluate the effects of any action proposed on small entities. This ANPRM will only generate comments and discussions on transportation planning procedures and management systems pertaining to pavement, bridge, safety, and congestion for FLHP-funded roads in accordance with existing laws, regulations, and guidance. If the final rule contemplated in this ANPRM is promulgated, States may be affected by the rule due to the possibility of expending additional resources during the transportation planning process, although it is anticipated that any additional expenditures would be minor. Because the States are not included in the definition of ''small entity'' set forth in 5 U.S.C. 601, we do not anticipate that any transportation planning procedures or management systems requirements would have substantial economic impact on small entities within the meaning of the Regulatory Flexibility Act. We encourage commenters to evaluate any options addressed here with regard to the potential for impact, however, and to formulate their comments accordingly.

Unfunded Mandates Reform Act of 1995

This ANPRM would not impose a Federal mandate resulting in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector.

Executive Order 12612 (Federalism Assessment)

Any action that might be proposed in subsequent stages of this proceeding will be analyzed in accordance with the principles and criteria contained in Executive Order 12612. Given the nature of the issues involved in this proceeding, the FHWA anticipates that any action contemplated will not have sufficient federalism implications to warrant the preparation of a federalism assessment. Nor does the FHWA anticipate that any action taken would preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. We encourage commenters to consider these issues, however, as well as matters concerning any costs or burdens that might be imposed on the States as a result of actions considered here.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Accordingly, the FHWA solicits comment on this issue.

Paperwork Reduction Act

Any action that might be contemplated in subsequent phases of this proceeding is not likely to involve a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, or information collection requirements not already approved for transportation planning and management systems. The FHWA, however, will evaluate any actions that might be considered in accordance with the terms of the Paperwork Reduction Act.

National Environmental Policy Act

The agency also will analyze any action that might be proposed for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) to assess whether there would be any affect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Chapter I

Bridge and congestion management systems, Bridges, Defense access roads, Forest highways, Highways and roads, Metropolitan transportation planning, Pavement, Safety, Statewide transportation planning, and Traffic monitoring systems.

(Authority: 23 U.S.C. 134, 135, 204, and 315; sec. 1115, Pub. L. 105–178, 112 Stat. 107 (1998); 49 CFR 1.48.)

Issued on: August 25, 1999.

Gloria J. Jeff,

Federal Highway Deputy Administrator.

[FR Doc. 99–22700 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–075]

RIN 2115–AE47

Drawbridge Operation Regulations; Navesink River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating regulations which govern the Oceanic Bridge, at mile 4.5, across the Navesink River at Locust Point, New Jersey. The bridge owner has asked the Coast Guard to change the regulations to require a twenty-four hour advance notice for bridge openings from December through March because there have been few requests to open the bridge during the winter months. This rulemaking is expected to relieve the bridge owner of the burden of crewing the bridge at all times and still meet the needs of navigation.

DATES: Comments must reach the Coast Guard on or before November 1, 1999.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, MA 02110–3350, or deliver them at the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District Bridge Branch maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at the above address 7 a.m. to 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–99–075) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background

The Oceanic Bridge at mile 4.5 across the Navesink River at Locust Point, New Jersey, has a vertical clearance of 22 feet at mean high water and 25 feet at mean low water. The existing operating regulations for the Oceanic Bridge requires the bridge to open on signal at all times.

The bridge owner, the County of Monmouth, asked the Coast Guard to

change the regulations for the bridge and submitted bridge opening log data for the Coast Guard to evaluate. The log data indicated the following openings for December, January, February, and March, from 1994 through 1998: December 4, 12, 9, 6 and 8; January 1, 1, 14, 2 and 6; February 1, 1, 0, 1 and 10; March 11, 13, 4, 6 and 13; respectively.

The bridge owner has asked for relief from crewing this bridge during the winter months and has requested that the bridge regulations be changed to require a twenty-four hour advance notice for openings from December through March.

Discussion of Proposal

The Coast Guard proposes to revise the operating rules, listed at 33 CFR 117.734, which govern drawbridges across the Navesink River. Operating regulations for the Oceanic Bridge, at mile 4.5, across the Navesink River, in Locust Point, New Jersey will be added to the above section. This change will require the Oceanic Bridge to open on signal; except that, from December 1 through March 31, the draw will open on signal if at least a twenty-four hour advance notice is given by calling the number posted at the bridge. The bridge will continue to open on signal at all other times.

This proposal will relieve the bridge owner of the requirement to have personnel available to crew the bridge during the winter months while meeting the reasonable needs of navigation.

The Coast Guard believes this proposal is reasonable based upon the low number of opening requests received during the winter months.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; Feb. 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the bridge has not had many requests to open during the winter months. Mariners will still be able to obtain bridge openings during the winter months provided they give twenty-four hour notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Therefore, the Coast Guard certifies under section 5 U.S.C. 605(b), for the reasons discussed in the Regulatory Evaluation section above, that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under Section 2.B.2., Figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations has been found not to have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is not required for the proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.734 is revised to read as follows:

§ 117.734 Navesink River (Swimming River).

The Oceanic Bridge, mile 4.5, shall open on signal; except that, from December 1 through March 31, the draw shall open on signal, if at least a twenty-four hour notice is given by calling the number posted at the bridge. The owner of this bridge shall provide and keep in good legible condition clearance gages with figures not less than eight inches high, designed, installed and maintained according to the provisions of § 118.160 of this chapter.

Dated: August 17, 1999.

Robert F. Duncan,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 99–22749 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Tampa 99–042]

RIN 2115 AA97

Safety Zone; Tampa Bay, Tampa, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the permanent regulations for floating safety zones around Anhydrous Ammonia (NH3) vessels transiting the waters of Tampa Bay. These revisions will allow for nighttime vessel transits, and will replace the requirement for a safety zone at the berth with a requirement to provide 30 minute advanced notice to the NH3 vessel or facility. Safety improvements in Tampa Bay have alleviated the need for such restrictions.

DATES: Comments must be received on or before November 1, 1999.

ADDRESSES: You may mail comments and related material to Commanding Officer, Marine Safety Office Tampa, 155 Columbia Drive, Tampa, Florida 33606. Marine Safety Office (MSO) Tampa maintains the public docket for

this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at MSO Tampa between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Warren Weedon, Chief, Waterways Management Branch at (813) 228–2189.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [COTP Tampa 99–042] and the specific section of this proposal to which each comment applies and give the reason for each comment.

The Coast Guard will consider all comments received during the comment period. It may change this rule in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to LT Weedon at the address under **ADDRESSES.** The request should include why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a notice in the **Federal Register**.

Background and Purpose

After extensive discussions from the Tampa Bay Harbor Safety Committee and the formation of a Safety Zone Subcommittee consisting of Coast Guard representatives, vessel agents, pilots, tug operators and port authority representatives, recommendations were forwarded to the Coast Guard Captain of the Port to amend the regulations for NH3 vessels transiting the Port of Tampa.

In 1991, Coast Guard Marine Safety Office Tampa temporarily amended the transit requirements for Anhydrous Ammonia (NH3) vessels, through Port Community Information Bulletin (PCIB) 6–91 which allowed NH3 vessels to enter and transit the Port of Tampa during the nighttime with a minimum of three mile visibility. It also replaced the safety zone extending 150 feet waterside while the vessel is moored, with a requirement calling for vessels over 5000 gross tons to provide a 30 minute notification allowing the NH3 vessel time to take appropriate safety precautions. PCIB 6–91 has been replaced with a case by waiver from the current regulations, utilizing the operational restriction initially identified in the PCIB. The Captain of the Port is not seeking to incorporate these proven operational guidelines to regulation.

In the late 1980's and early 1990's, many safety changes were made to the port, including the widening and deepening of the shipping channels, installation of centerline range marks, inbound and outbound, an increased brightness in range lights and a new Vessel Traffic Advisory System (VTAS). These changes have enhanced the level of safety on the navigable waters of Tampa Bay.

In addition to implementing the amendments to the operational requirements for NH3 vessels, the Coast Guard is also seeking comment on the NH3 safety zone as a whole. During the subcommittee meetings, discussion ranged from the total removal of the NH3 safety zone regulations to no changes at all. The Coast Guard welcomes any comments on the Safety Zone regulations as they stand in 33 CFR 165.703.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This regulation already exists. The rulemaking will have minimal affect on vessel traffic as it will only extend the hours of operation to include the nighttime.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) that this rule will not have a significant effect upon a substantial number of small entities, as this regulation will only be in effect approximately twice a week for two hours in a limited area of the Port of Tampa.

If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has determined under Figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, that this proposed rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination has been prepared and is available in the docket for inspection and copying.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Revise § 165.703 (b) and (g) to read as follows:

§ 165.703 Tampa Bay, Florida—Safety Zone.

* * * * *

(b) All vessels over 5000 gross tons intending to pass anhydrous ammonia vessels moored in Port Sutton, and all vessels intending to moor in the R. E. Knight facilities at Hookers Point while an anhydrous ammonia vessel is moored in this facility, must give 30 minutes notice to the anhydrous ammonia vessel so it may take appropriate safety precautions.

* * * * *

(g) Vessels carrying anhydrous ammonia are permitted to enter and transit Tampa and Hillsborough Bay and approaches only with a minimum of three miles visibility.

* * * * *

Dated: August 5, 1999.

A.L. Thompson, Jr.,

Captain, U.S. Coast Guard, Captain of the Port, Tampa.

[FR Doc. 99–22654 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA092/098–5044b; FRL–6428–9]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia; Enhanced Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to convert our conditional approval of the Virginia enhanced inspection and maintenance (I/M) program as a revision to the Virginia State Implementation Plan (SIP) to a full approval. In the ''Rules and Regulations'' section of this **Federal Register**, we are converting our conditional approval as a direct final rule without prior proposal because we view this as a noncontroversial action and we anticipate no adverse comments. If we receive no adverse comments, we will not take further action on this proposed rule. If we receive adverse comments, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Anyone interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 1, 1999.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. You may inspect copies of the documents relevant to this action during normal business hours at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103, and the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, (215) 814–2174, at the EPA Region III address above, or by e-mail at magliocchetti.catherine@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia; Enhanced Inspection & Maintenance Program, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: August 16, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 99–22453 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK–21–1709–b; FRL–6412–8]

Approval and Promulgation of State Implementation Plans: Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Alaska which include revisions to Alaska's Air Quality Control Regulations (18 AAC 50), Emissions Inspection and Maintenance (I/M) requirements for Motor Vehicles (18 AAC 52), and Fuel Requirements for Motor Vehicles (18 AAC 53).

In addition, the revisions include changing the I/M program schedule for cars subject to I/M from annual to biennial, replacing the CO contingency measures for Anchorage, updating Alaska's General and Transportation conformity programs, and streamlining several portions of the Alaska Air Quality Control Plan for more efficient reading and organization. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received in writing by October 1, 1999.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the state submittal are available at the following addresses for inspection during normal business hours. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101. The Alaska Department of Environmental Conservation, 410 Willoughby Avenue, Suite 105, Juneau, AK 99801–1795.

FOR FURTHER INFORMATION CONTACT: Ms. Montel Livingston, Office of Air Quality, (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–0180.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: July 22, 1999.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 99–22451 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6430–5]

Indiana: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant final authorization to the hazardous waste program revisions submitted by Indiana. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this authorization in the preamble to the immediate final rule. If EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If EPA receives adverse written comments, EPA will withdraw the immediate final rule and it will not take effect. EPA will then address public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action must do so at this time.

DATES: Written comments must be received on or before October 1, 1999.

ADDRESSES: Mail written comments to Gary Westefer, Indiana Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone 312/886–7450. You can examine copies of the materials submitted by Indiana during normal business hours at the following locations: EPA Region 5, contact Gary Westefer at the above address and telephone number; or Lynn West, Chief, Regulatory Development Section, Indiana Department of Environmental Management, 100 North Senate, P.O. Box 6015, Indianapolis, Indiana 46206–6015, Phone number: 317/232–3593.

FOR FURTHER INFORMATION CONTACT: Gary Westefer at U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone 312/886–7450.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 99–22449 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 403

[FRL–6431–5]

Streamlining the General Pretreatment Regulations for Existing and New Sources of Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of extension of public comment period.

SUMMARY: Today, EPA is providing notice that the public comment period for the proposed rule that would revise several provisions of the General Pretreatment Regulations for Existing and New Sources of Pollution (40 CFR Part 403) published in the **Federal Register** on July 22, 1999 (64 FR 39563) is being extended.

DATES: Written comments on this proposed rule must be submitted on or before November 19, 1999. Comments provided electronically will be considered timely if they are submitted by 11:59 p.m. (Eastern time) November 19, 1999.

ADDRESSES: Commenters are requested to submit an original and two copies of their comments and enclosures (including references) to the Comments Clerk for Pretreatment Program Streamlining, Water Docket (MC–4101), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Commenters who would like acknowledgment of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

EPA will also accept comments electronically. Comments should be addressed to the following Internet address: ''ow-docket@epa.gov''. Electronic comments must be submitted as an ASCII or WordPerfect file avoiding the use of special characters and any form of encryption. Electronic comments must be identified by the docket number W–97–09, and may be filed online at many Federal Depository Libraries. No confidential business information (CBI) should be sent via e-mail.

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Smith, U.S. EPA, Office of Wastewater Management (OWM), Permits Division (4203), 401 M Street, S.W., Washington, D.C. 20460, (202) 260–5586.

SUPPLEMENTARY INFORMATION: On July 22, 1999, EPA published proposed revisions for ''Streamlining the General Pretreatment Streamlining Regulations for Existing and New Sources of Pollution, 40 CFR Part 403'' (64 FR 39563). The July 22 notice provided a deadline of 60 days from the date of publication for receipt of public comments. Since the publication of the July 22 notice EPA has received requests to extend the comment period to allow sufficient time for all parties potentially impacted by these revisions to consider and provide comprehensive comments on the proposed regulatory changes. In response to these requests, EPA has decided to extend the public comment period by an incremental 60 days to November 19, 1999.

Dated: August 24, 1999.

J. Charles Fox,

Assistant Administrator for Water.

[FR Doc. 99–22743 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC48

Endangered and Threatened Wildlife and Plants; Notice of Public Hearings on Proposed Rule To Remove the Bald Eagle From the List of Endangered and Threatened Species in the Lower 48 States.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; Notice of public hearings.

SUMMARY: The Service gives notice of the agency's intent to hold public hearings on the proposed rule to remove the bald eagle from the List of Endangered and Threatened Species in the lower 48 States. The public hearings are being held in response to written requests received within the 45-day hearing request period. The comment period remains open through October 5, 1999. Public hearings will be held within the comment period and will allow appropriate time for the public to provide further comments.

DATES AND ADDRESSES: The first public hearing will be held on Monday, September 13, 1999, in Nashville, Tennessee, at the McGavock High

School Auditorium, 3150 McGavock Pike, Nashville, Tennessee, from 6:30 pm–8:30 pm. The second public hearing will be held on Tuesday, September 21, 1999, in Yorktown, Virginia, at the York High School Auditorium, 9300 George Washington Highway (U.S. Route 17), Yorktown, Virginia, from 6:00 pm–9:00 pm. The final public hearing will be held on Thursday, September 23, 1999, in Phoenix, Arizona, in the 4th Floor Music Room of the Phoenix Public Library, 1221 North Central Avenue, Phoenix, Arizona, from 6:30 pm to 8:30 pm.

The comment period remains open until October 5, 1999, as originally published in the July 6, 1999, **Federal Register** Notice. Comments and materials concerning this proposal should be sent to Jody Gustitus Millar, Bald Eagle Recovery Coordinator, U.S. Fish and Wildlife Service, 4469–48th Avenue Court, Rock Island, Illinois 61201, or may be sent through our website at www.fws.gov/r3pao/eagle. Comments and materials received will be available for public inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Jody Gustitus Millar, Bald Eagle Recovery Coordinator, at 309/793–5800 x 524.

SUPPLEMENTARY INFORMATION: The bald eagle (*Haliaeetus leucocephalus*) is listed as threatened under the Endangered Species Act of 1973 throughout the lower 48 States. The bald eagle also occurs in Alaska, Canada, and in small numbers in northern Mexico, where it is not protected under the Act. The Fish and Wildlife Service proposes to remove the bald eagle from the List of Endangered and Threatened Species in the lower 48 States. This action would not alter those conservation measures already in force to protect the species and its habitats.

The **Federal Register** notice announcing the proposed rule was published on July 6, 1999 (64 FR 36454). The comment period ends on October 5, 1999, and the deadline for receipt of public hearing requests was August 20, 1999. Six requests for public hearings have been received within the deadline, including one from New York, one from Virginia, two from Kentucky, one from Arkansas, and one from Arizona. Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing. Oral statements may be limited to 5 or 10 minutes if the number of parties present necessitates some limitation. There are no limits to the length of written comments presented at this hearing or mailed to the Service.

Dated: August 27, 1999.

Charles M. Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 99–22917 Filed 8–31–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 990105002–9234–02; I.D. 071599B]

RIN 0648–AH41

Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery; Control Date for American Lobster

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; consideration of a control date for the American lobster fishery.

SUMMARY: NMFS announces that it is considering, and is seeking public comment on, whether there is a need under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) to limit or restrict future access to the American lobster (*Homarus americanus*) fishery in certain geographic areas. This notice is intended to promote awareness of the potential eligibility criteria for future access to lobster management areas, and to discourage shifts into new areas by lobster trap vessels subject to Federal lobster regulations. It also discourages non-trap vessels from entering the trap fishery based on economic speculation while NMFS, in consultation with the Atlantic States Marine Fisheries Commission (Commission), considers whether and how access and effort should be controlled. The potential eligibility criteria may be based on historical participation and/or historical trap levels in lobster conservation management areas (LCMAs). NMFS is considering September 1, 1999 as a possible ''control date,'' and such date may be used as a cut-off date for establishing eligibility criteria for future access in the lobster trap fishery subject to Federal authority. This document, therefore, gives the public notification that interested participants should locate and preserve records that substantiate and verify their participation in the American lobster fishery in Federal waters.

DATES: Comments must be received by October 1, 1999.

ADDRESSES: Comments should be addressed to Harold Mears, Director, State, Federal and Constituent Programs Office, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Bob Ross, Fishery Management Specialist, 978–281–9234.

SUPPLEMENTARY INFORMATION: The lobster fishery takes place from North Carolina to Maine. Over one-half of all American lobsters are landed in Maine, with most of the other landings occurring in or from Massachusetts, Rhode Island, Long Island Sound, and Georges Bank. Most lobsters (over 80 percent) are taken in state waters, which extend from the coast to 3 nautical miles (5.56 kilometers) from shore. The offshore trap fishery, which occurs primarily in the offshore canyon areas at the edge of the continental shelf, has developed only in the past 15 years and accounts for most of the remaining landings. The lobster fishery is a year-round fishery in the United States, including the summer and fall months when the lobsters are molting. Approximately 97 percent of lobsters are taken in lobster traps. The rest are taken in trawls, gillnets, dredges, and by divers.

There has been a dramatic increase in fishing effort since the 1970s and effort is now at an all-time high. NMFS estimates that each trap remains in the water about 30 percent longer than in 1970 before being hauled. Current fishing effort removes a large proportion of lobsters before they have had a chance to spawn even once, and the average size of lobsters landed continues to drop. Harvesters depend heavily on lobsters within one molt of the legal size (3–1/4 inches or 8.26 cm carapace length). In recent years, 85 percent or more of landings have been composed of animals in this size range.

The most recent NMFS assessment of the American lobster stock concluded that it is overfished throughout its range (22nd Northeast Regional Stock Assessment Workshop Document 96–13, dated September, 1996). In the Report to Congress on the Status of Fisheries of the United States, dated September 1997, NMFS included American lobster on the list of overfished fisheries. The lobster stock is considered to be overfished because the number of eggs produced each year is less than 10 percent of the number that would have been produced if the stock

were not fished. The more eggs produced, the greater the margin of safety for the population if environmental conditions become unfavorable for the survival of juvenile lobsters to marketable size and the greater the likelihood of rebuilding. Increasing egg production will reduce the risk that the stock will collapse and increase the chances of rebuilding the resource.

The lobster fishery has been managed from the Federal perspective under regulations at 50 CFR part 649 pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The fishery in state waters is mostly managed through an interstate plan developed by the Commission, consistent with the Atlantic Coastal Act. Since the majority of lobsters are harvested from state waters, NMFS has proposed that lobsters would be managed more effectively through an interstate plan and Federal regulations issued under the authority of Atlantic Coastal Act [61 FR 13478]. Accordingly, this potential control date would be associated with Federal lobster regulations under either the Magnuson-Stevens Act or the Atlantic Coastal Act, depending on if and when NMFS withdraw the Magnson-Stevens Act regulations.

The Commission approved Amendment 3 to the American Lobster Interstate Fishery Management Plan (ISFMP) in December 1997. The states, through adoption of Amendment 3 to the Commission's American Lobster ISFMP, recognized the need to end overfishing and rebuild stocks of American lobster. Amendment 3 identified a variety of new requirements in state waters, including the establishment of a procedure whereby fishermen, including some who fish exclusively in Federal waters, may make recommendations for further management measures on an area by area basis. In the spring of 1998, in each of the seven lobster management areas identified in the ISFMP, Lobster Conservation Management Teams (LCMTs) were formed to advise and make recommendations to the Commission on management measures necessary to restore egg production for the American lobster resource in each of the management areas to greater than the overfishing definition. For each LCMT that submitted a management proposal, the recommended management measures were reviewed by the Commission's Lobster Technical Committee to assess their ability to achieve the egg production milestones for the year 2000. The proposals vary by management area, and each proposal includes one or more of the following management measures: Increasing the minimum gauge size, implementing a maximum gauge size, increasing the escape vent size, capping fishing effort, limiting the number of traps per vessel, and closing areas. In April and May 1999, the Commission took a selective list of management measures identified in the LCMT area proposals to public hearings as a draft Addendum 1 to Amendment 3 of the ISFMP.

The Commission approved Addendum 1 on August 3, 1999. It includes area management measures to further limit access to the lobster fishery. Subsequent implementation of these measures is intended by the Commission to be based upon historic participation guidelines approved as part of Addendum 1. These guidelines include consideration of unique limitations, fishing practices, and records for evaluating previous fishing history, which would lead to resource allocation decisions in selected management areas. As a result of this addendum to the ISFMP, the Commission will likely recommend area-specific actions for Federal waters, which could include management measures based upon the historic participation guidelines. The Commission intends to assess other aspects of the area based management proposals, including an increase in the minimum gauge size and increases in the escape vent size, after the status of the stock is updated during the fall, 1999. This assessment could also lead to additional recommendations for management measures in Federal waters.

NMFS is also aware that recent constraints on participation in several traditional otter trawl fisheries, including the Mid-Atlantic summer flounder, scup, and black sea bass fisheries and the New England multispecies fisheries, and broader use of area closures may result in a shift in fishing effort to the lobster trap fishery by vessels that have traditionally harvested lobsters by non-trap methods. An unchecked increase in effort in the lobster trap fishery, as a result of a shift from non-trap to trap gear, may jeopardize current efforts to end overfishing and rebuild stocks.

For these reasons, NMFS, in consultation with the Commission, is considering proposed rulemaking to address whether and how to limit entry of vessels currently holding a Federal American lobster limited access fishing permit, or vessels that are subject to Federal lobster regulations, in to LCMAs where such vessels have not historically fished, as well as limiting or restricting non-trap vessels from using traps to fish for lobsters. Proposed rulemaking may include potential eligibility criteria based on historical participation and/or historical trap levels in LCMAs. NMFS is considering September 1, 1999 as a possible control date and NMFS may use such date as a cut-off date for establishing eligibility criteria for future access in the lobster fishery subject to Federal authority. The establishment of this control date is intended, in part, to discourage speculative shifting of effort by fishermen subject to Federal lobster regulations into certain LCMAs or from non-trap to trap gear.

Consideration of a control date does not commit NMFS to any particular management regime or criteria, either for entry into lobster management areas not historically fished by Federal permit holders, or for the restrictions on the transfer of non-trap fishing effort. Fishermen are not guaranteed future participation in any lobster management area, regardless of their entry date or intensity of participation in the fishery before or after the control date under consideration. NMFS subsequently may choose a different control date or may choose a management regime that does not make use of a control date. NMFS may choose to give variably weighted consideration to fishermen active in the fisheries before and after the control date. Other qualifying criteria, such as, but not limited to, documentation of landings and sales, may be applied for entry. NMFS may also choose to take no further action to control entry or access into the lobster management areas or address the shift in effort from non-trap to trap gear, in which case the control date may be rescinded. Any action will be taken pursuant to the requirements established under the Atlantic Coastal Act. This document, therefore, gives the public notification that interested participants should locate and preserve records that substantiate and verify their participation in the American lobster fishery in Federal waters.

NMFS is seeking public comment on this advance notice of proposed rulemaking (see **ADDRESSES**) under the Atlantic Coastal Act. Public comment is sought as to whether there is a need to limit or restrict future access to the American lobster fishery in certain geographic areas, known as LCMTs, and, if there is a need, as to what should be the eligibility criteria.

Authority: 16 U.S.C. 1851 note; 16 U.S.C. 5101 *et seq.*

Dated: August 24, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–22669 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 64, No. 169

Wednesday, September 01, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Solicitation for Membership to the National Genetic Resources Advisory Council.

AGENCY: Agricultural Research Service, USDA.

ACTION: Solicitation for membership.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces solicitation for nominations to fill five vacancies on the National Genetic Resources Advisory Council.

DATE: Written nominations must be postmarked no later than September 22, 1999.

FOR FURTHER INFORMATION CONTACT: Henry L. Shands, Director, National Genetic Resources Program, Room 323-A Jamie L. Whitten Federal Building, USDA, 1400 Independence Avenue SW, Washington, D.C. 20250–0300. Telephone 202–205–7835, Fax 202-690–1434.

SUPPLEMENTARY INFORMATION: The National Genetic Resources Advisory Council consists of seven ex-officio members and up to nine members appointed by the Secretary of Agriculture to provide advice to the Secretary and Director, National Genetic Resources Program, regarding the advancement of the Program administered by the Agricultural Research Service. Detailed information about the Council may be located at: http://ars-grin.gov/ngrac. The members of the advisory council who are not ex officio members shall be appointed by the Secretary as follows: (1) Two-thirds of the members shall be appointed from among the leading representatives of the scientific disciplines relevant to the activities of the program, including agricultural sciences, environmental sciences, natural resource sciences, health sciences, and nutritional sciences. (2) One-third of the members shall be appointed from the general public and shall include leaders in fields of public policy, trade, international development, law, or management. The term of office of a member is four years. Incumbent members represent the fields of law, research management, microbiology and animal genetic resources. Expertise is desired in applied anthropology, forest tree genetics, nutrition, plant genetic resources, genetic resources collections management and genomics.

Members of the advisory council shall serve without compensation, if not otherwise officers or employees of the United States, except that they shall, while away from their homes or regular places of business in the performance of services for the advisory council, be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under sections 5701 through 5707 of title 5, United States Code.

USDA is actively soliciting nominations of qualified minorities, women, persons with disabilities and members of low income populations through outreach to minority-focused media outlets, Historically Black Colleges and Universities, including Clark Atlanta University, the Hispanic Association of Colleges and Universities, the National Congress of Native American Indians, the Intertribal Agriculture Council, Gallaudet and Purdue Universities, and the Rural Coalition. To ensure that recommendations of the NGRAC take into account the needs of underserved and diverse communities served by the USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Nominations for NGRAC membership must be typed and provide the appropriate background documents required by USDA policy: (1) a brief summary of no more than two (2) pages explaining the nominee's suitability to serve on the NGRAC, (2) a resume or curriculum vitae, and (3) a completed copy of Form AD–755. Form AD755 may be downloaded in PDF form at http://www.ars.usda.gov/afm2/divisions/itd/ISB/ Forms/DOWNLOADS/RECORDS/AD-755.PDF. Nominations should be sent to Henry L. Shands at the address listed above, and be post marked no later than September 22, 1999.

Henry L. Shands,

Assistant Administrator for Genetic Resources, USDA–ARS.

[FR Doc. 99–22704 Filed 8–31–99; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designations for the Hastings (NE), Aberdeen (SD), Missouri, Decatur (IL), Grand Forks (ND), McCrea (IA), and South Carolina Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (Act):

Hastings Grain Inspection, Inc. (Hastings);
Aberdeen Grain Inspection, Inc. (Aberdeen);
Missouri Department of Agriculture (Missouri);
Decatur Grain Inspection, Inc. (Decatur);
Grand Forks Grain Inspection Department, Inc. (Grand Forks);
John R. McCrea Agency, Inc. (McCrea); and
South Carolina Department of Agriculture (South Carolina).

EFFECTIVE DATES: November 1, 1999, for Hastings, December 1, 1999, for Aberdeen and Missouri, and January 1, 2000, for Decatur, Grand Forks, McCrea, and South Carolina.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW, Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the April 1, 1999, **Federal Register** (64 FR 15724), GIPSA asked persons interested in providing official services in the geographic areas assigned to Hastings, Aberdeen, Missouri, Decatur, Grand Forks, McCrea, and South Carolina to submit an application for designation. Applications were due by April 30, 1999. Aberdeen, Decatur, Grand Forks, McCrea, and South Carolina were the only applicants for their respective areas, and each applied for designation to provide official services in the entire area currently assigned to them.

There were two applicants for the Hastings area: Hastings and Kansas Grain Inspection Service, Inc. (Kansas). Hastings applied for designation to provide official services in the entire area currently assigned to them. Kansas, a designated official grain inspection agency operating in Kansas, Colorado, and Wyoming, applied for designation to provide official services in the western portion of the Hastings area.

There were three applicants for the Missouri area: Missouri, Kansas, and North Dakota Grain Inspection Services, Inc. (North Dakota). Missouri applied for designation to provide official services in the entire area currently assigned to them. Kansas applied for designation to provide official services in the western portion of the Missouri area. North Dakota, a designated official grain inspection agency operating in Illinois as Illinois Official Grain Inspection, applied for the eastern portion of the Missouri area.

In the April 1, 1999, **Federal Register**, GIPSA asked for comments on the official services provided by Hastings, Aberdeen, Missouri, Decatur, Grand Forks, McCrea, and South Carolina. There were two comments to the April 1, 1999, **Federal Register**, both from grain industry customers of Missouri, and both supporting designation of Missouri.

In the June 1, 1999, **Federal Register** (64 FR 29259), GIPSA asked for comments on the applicants for the Hastings and Missouri areas. Since Aberdeen, Decatur, Grand Forks, McCrea, and South Carolina were the only applicants for their respective areas, GIPSA did not ask for comments on them.

There were 19 comments to the June 1, 1999, **Federal Register**, on the applicants for the Hastings area: 13 comments from Hastings grain customers supporting Hastings, 1 from Hastings supporting themselves, and 5 comments (3 from grain firms, 1 from a railroad, and 1 from a popcorn company) supported designation of Kansas.

There were 21 comments to the June 1, 1999, **Federal Register** on the applicants for the Missouri area: 19 comments from legislators of Missouri and 2 from grain companies all supporting designation of Missouri. There were no comments on Kansas or North Dakota.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act and, according to Section 7(f)(1)(B), determined that Hastings and Missouri are better able than any other applicant to provide official services in the geographic areas for which they applied.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and, according to Section 7(f)(l)(B), determined that Aberdeen, Decatur, Grand Forks, McCrea, and South Carolina are able to provide official services in the geographic areas for which they applied.

The following organizations are designated to provide official services in the geographic areas specified in the April 1, 1999, **Federal Register**.

Official agency	Designation start	Designation end	Telephone
Hastings	11/01/1999	9/30/2002	402–462–4254
Aberdeen	12/01/1999	9/30/2002	605–225–8432
Missouri	12/01/1999	9/30/2002	573–751–5515
Decatur	01/01/2000	9/30/2002	217–429–2466
Grand Forks	01/01/2000	9/30/2002	701–772–0151
McCrea	01/01/2000	9/30/2002	319–242–2073
South Carolina	01/01/2000	9/30/2002	843–554–1311

Interested persons may obtain official services by calling the telephone numbers listed above.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.).

Dated: August 23, 1999.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 99–22553 Filed 8–31–99; 8:45 am]

BILLING CODE 3410–EN–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alabama Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on September 27, 1999, at the Christian Tutwiler Hotel, Park Place 21st Street North, Birmingham, Alabama 35203. The purpose of the meeting is to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 23, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–22685 Filed 8–31–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arkansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on September 21, 1999, at the Fayetteville Hilton, 70 North East Avenue, Fayetteville, Arkansas 72701. The purpose of the meeting is to plan future activities and review draft report.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 23, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–22684 Filed 8–31–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Delaware Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Delaware Advisory Committee to the Commission will convene at 11:00 a.m. and adjourn at 5:00 p.m. on September 29, 1999, at the Brandywine Suites Hotel, 707 King Street, Wilmington, DE 19801. The Committee will review milestones and plans for its reference guide project, discuss topics for future briefings on civil rights issues, schedule meetings, and receive staff reports on administrative matters.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson James E. Newton, 302–831–8683, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 23, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–22683 Filed 8–31–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on September 22, 1999, at the Courtyard by Marriott, Meeting Room B, 3805 Cypress Street, Tampa, Florida 33607. The purpose of the meeting is to plan future projects and to receive information from invited guests on affirmative action, and Federal civil rights enforcement efforts in Florida.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 20, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–22682 Filed 8–31–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Oklahoma Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Oklahoma Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:00 p.m. on September 24, 1999, at the Travelodge (formerly the Best Western), 534 South 32nd Street, Muskogee, Oklahoma 74401. The purpose of the meeting is to plan future activities and review draft report.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 23, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–22686 Filed 8–31–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Performance Review Board Membership

AGENCY: Economics and Statistics Administration, Commerce.

ACTION: Performance Review Board Membership.

SUMMARY: Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economics and Statistics Administration Senior Executive Service (SES) Performance Appraisal System:

Carol A. Ambler
William G. Bostic, Jr.
Chester E. Bowie
Cynthia Z.F. Clark
Nancy M. Gordon
John F. Long
Rosemary D. Marcuss
Marilia A. Matos
Michael S. McKay
C. Harvey Monk
Walter C. Odom, Jr.
Sumiye Okubo
Judith N. Petty
Marvin D. Raines
John H. Thompson
Preston J. Waite
Katherine Wallman
James K. White
Tommy Wright

Dated: August 25, 1999.

James K. White,

Executive Director, Performance Review Board.

[FR Doc. 99–22738 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–BS–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet September 16, 1999, 10:30 a.m., Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues, N.W., Washington, DC. The

Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

General Session

1. Opening remarks.

2. Presentation of papers and comments by the public.

3. Presentation on status of implementation of the Chemical Weapons Convention.

4. Discussion of documents regarding Biological Weapons Convention triggers.

Executive Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. Reservations are not required. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members; the materials should be forwarded prior to the meeting to the address below: Ms. Lee Ann Carpenter, BXA MS: 3876, U.S. Department of Commerce, 15 St. & Pennsylvania Ave., NW., Washington, D.C. 20230. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 24, 1998, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For more information call Ms. Lee Ann Carpenter at (202) 482–2583.

Dated: October 26, 1999.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 99–22769 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Export Administration; Notice of Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration (PECSEA) will be held September 27, 1999, 2:00 p.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, N.W., Washington, D.C. The PECSEA provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on Administration export control initiatives.
4. Task Force reports.

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting is open to the public and a limited number of seats will be available. Reservations are not required. To the extent time permits, members of the public may present oral statements to the PECSEA. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to PECSEA members, the PECSEA suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, Bureau of Export Administration, 15th St. & Pennsylvania Ave., N.W., U.S. Department of Commerce, Washington, D.C. 20230. A Notice of Determination to close meetings, or portions of meetings, of the PECSEA to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 16, 1997, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: August 26, 1999.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 99–22770 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

June 1999 Sunset Reviews: Final Results and Revocations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of sunset reviews and revocations of antidumping duty orders: Small Business Telephone Systems from Japan (A–588–809), Small Business Telephone Systems from Taiwan (A–583–806), Small Business Telephone Systems from South Korea (A–580–803), Multi-angle Laser Light Scattering Instruments from Japan (A–588–813), and Benzyl Paraben from Japan (A–588–816).

SUMMARY: On June 1, 1999, the Department of Commerce (''the Department'') initiated sunset reviews of the antidumping duty orders on small business telephone systems from Japan, small business telephone systems from Taiwan, small business telephone systems from South Korea, multi-angle laser light scattering instruments from Japan, and benzyl paraben from Japan. Because no domestic party responded to the sunset review notice of initiation by the applicable deadline, the Department is revoking these orders.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

The Department issued antidumping duty orders on small business telephone systems from Japan (54 FR 50789) and small business telephone systems from Taiwan (54 FR 50790) on December 11, 1989. The Department also issued antidumping duty orders on small business telephone systems from South Korea (55 FR 4215) on February 7, 1990, multi-angle laser light scattering instruments (55 FR 48144) from Japan on November 19, 1990, and benzyl paraben from Japan (56 FR 5795) on February 13, 1991. Pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department initiated sunset reviews of these orders by publishing notice of the initiation in the **Federal Register** (64 FR 29261 (June 1, 1999)). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for these proceedings to inform them of the automatic initiation of sunset reviews on these orders.

No domestic interested parties in the sunset reviews on these orders responded to the notice of initiation by the June 16, 1999, deadline (*see* section 351.218(d)(1)(i) of the *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13520 (March 20, 1998) (''*Sunset Regulations*'')).

Determination To Revoke

Pursuant to section 751(c)(3)(A) of the Act and § 351.218(d)(1)(iii)(B)(3) of the *Sunset Regulations*, if no domestic interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review, revoking the finding or order. Because no domestic interested party responded to the notice of initiation by the applicable deadline, June 16, 1999, we are revoking these antidumping duty orders.

Effective Date of Revocation

Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States Customs Service to terminate the suspension of liquidation of the merchandise subject to these orders entered, or withdrawn from warehouse, on or after January 1, 2000. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews on these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: August 26, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–22790 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

July 1999 Sunset Reviews: Final Results and Revocation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of sunset review and revocation of antidumping duty order: Stainless steel hollow products from Sweden (A–401–603).

SUMMARY: On July 1, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on stainless steel hollow products from Sweden. Because no domestic party responded to the sunset review notice of initiation by the applicable deadline, the Department is revoking this order.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Scott Smith or Melissa G. Skinner, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 1987, the Department issued the antidumping duty order on stainless steel hollow products from Sweden (52 FR 45985).[1] Pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department initiated sunset reviews of this order by publishing notice of the initiation in the **Federal Register** (64 FR 35588, July 1, 1999). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for this proceeding to inform them of the automatic initiation of the sunset review on stainless steel hollow products from Sweden.

No domestic interested party in the sunset review of this order responded to the notice of initiation by the July 16, 1999, deadline (*see* section 351.218(d)(1)(i) of *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13520 (March 20, 1998) (''*Sunset Regulations*'')).

Determination To Revoke

Pursuant to section 751(c)(3)(A) of the Act and section 351.218(d)(1)(iii)(B)(3) of the *Sunset Regulations*, if no domestic interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review, revoking the finding or order or terminating the suspended investigation. Because no domestic interested party responded to the notice of initiation by the applicable deadline, July 16, 1999, we are revoking this antidumping duty order.

Effective Date of Revocation and Termination

Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States Customs Service to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after January 1, 2000. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: August 26, 1999.

Barnard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–22794 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–DS–P

[1] On November 5, 1992, the Department amended the antidumping duty order to include welded stainless steel hollow products from Sweden in the scope of the order (57 FR 52761). On August 16, 1995, the Department revoked this order with respect to seamless stainless steel hollow products from Sweden (60 FR 42529). The order remains in effect for welded stainless steel hollow products from Sweden.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–801, A–588–804]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy and Japan: Notice of Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative reviews.

SUMMARY: On July 1, 1999, the Department of Commerce published the final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The period of review is May 1, 1997, through April 30, 1998. Based on the correction of a typographical error and the correction of certain ministerial errors, we have changed the margins for ball bearings for two companies and for cylindrical roller bearings for one company.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Minoo Hatten or Robin Gray, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1690 or (202) 482–4023, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act.

Background

On July 1, 1999, the Department published the final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom (64 FR 35590)(Final Results). The reviews covered 21 manufacturers/exporters and the period May 1, 1997, through April 30, 1998.

After publication of our final results, we received a timely allegation from a respondent, Somecat S.p.A.(Somecat), that the margin for ball bearings (BBs) was reported inaccurately in the final results notice. We agree with the respondent. The margin for Somecat should be 0.25 percent, not 0.45 percent as reported in the Final Results.

We also received a timely allegation from NSK Ltd. and NSK Corporation (collectively, NSK) that we had made two ministerial errors in calculating the final results. We agree with the respondent. We are unable to summarize these errors due to their proprietary nature. See analysis memorandum from analyst to file dated July 29, 1999, for a description of the changes we made to correct the ministerial errors.

Amended Final Results of Review

As a result of the correction of the typographical error and amended margin calculations, the following weighted-average margins exist for Somecat and NSK for the period May 1, 1997, through April 30, 1998:

[In percent]

Country: Manufacturer Exporter	BB rate	CRBs rate
Italy: Somecat S.p.A	0.25	(1)
Japan: NSK Ltd.	0.76	4.36

[1] No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We will also direct Customs Service to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of review (64 FR 35590) and as amended by this determination. The amended deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative reviews.

We are issuing and publishing this determination and notice in accordance with sections 751(h) and 777(i)(1) of the Act.

Dated: August 25, 1999.

Bernard T. Carreau,

Assistant Secretary for Import Administration.

[FR Doc. 99–22789 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–056]

Continuation of Antidumping Finding: Melamine From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping finding: Melamine from Japan.

SUMMARY: On December 8, 1998, the Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (''the Act''), determined that revocation of the antidumping finding on melamine from Japan would be likely to lead to continuation or recurrence of dumping (63 FR 67654 (December 8, 1998)). On July 28, 1999, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of the antidumping finding on melamine from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 40895 (July 28, 1999)). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping finding on melamine from Japan.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: September 1, 1999.

Background

On August 3, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 41227 and 63 FR 41282, respectively) of the antidumping finding on melamine from Japan pursuant to section 751(c) of the Act. As a result of this review, the Department found that revocation of the antidumping finding would be likely to lead to continuation or recurrence of

dumping and notified the Commission of the magnitude of the margin likely to prevail were the finding to be revoked. (*See Final Results of Expedited Sunset Review: Melamine from Japan*, 63 FR 67654 (December 8, 1998)).

On July 28, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping finding on melamine from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. (*See Melamine from Japan*, 64 FR 40895 (July 28, 1999) and USITC Pub. 3209, Inv. No. AA1921–162 (Review) (July 1999)).

Scope

The merchandise covered by this antidumping finding is imports of melamine in crystal form from Japan, which is a fine white crystalline powder used to manufacture melamine formaldehyde resins, and is classifiable under item 425.1020 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item number 2933.61.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping finding would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping finding on melamine from Japan. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. Pursuant to section 751(c)(6)(A)(iii) of the Act, any subsequent five-year review of this finding will be initiated not later than the fifth anniversary of the effective date of continuation of this finding.

The effective date of continuation of a finding, order, or suspension agreement will be the date of publication in the **Federal Register** of the Notice of Continuation. As provided in 19 CFR 351.218(f)(4), the Department normally will issue its determination to continue a finding, order, or suspended investigation not later than seven days after the date of publication in the **Federal Register** of the Commission's determination concluding the sunset review and immediately thereafter will publish its notice of continuation in the **Federal Register**. Pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, therefore the Department intends to initiate the next five-year review of this finding not later than thirty (30) days before the fifth anniversary of the effective date of this notice.

Dated: August 26, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–22791 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–046]

Continuation of Antidumping Finding: Polychloroprene Rubber From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping finding: polychloroprene rubber from Japan.

SUMMARY: On December 8, 1998, the Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (''the Act''), determined that revocation of the antidumping finding on polychloroprene rubber from Japan would be likely to lead to continuation or recurrence of dumping (63 FR 67656 (December 8, 1998)). On July 30, 1999, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of the antidumping finding on polychloroprene rubber from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 41458 (July 30, 1999)). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping finding on polychloroprene rubber from Japan.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: August 6, 1999.

Background

On August 3, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 41227 and 63 FR 41284, respectively) of the antidumping finding on polychloroprene rubber from Japan pursuant to section 751(c) of the Act. As a result of its review, the Department found that revocation of the antidumping finding would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the finding to be revoked. (*See Final Results of Expedited Sunset Review: Polychloroprene Rubber from Japan*, 63 FR 67656 (December 8, 1998)).

On July 30, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping finding on polychloroprene rubber from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. (*See Polychloroprene Rubber from Japan*, 64 FR 41458 (July 30, 1999) and USITC Pub. 3212, Inv. No. AA1921–129 (Review) (July 1999)).

Scope

The merchandise covered by this antidumping finding is imports of polychloroprene rubber from Japan, an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, currently classifiable under items 4002.42.00, 4002.49.00, 4003.00.00, 4462.15.21 and 4462.00.00. HTS item numbers are provided for convenience and for customs purposes. The written descriptions remain dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping finding would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping finding on polychloroprene rubber from Japan. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. Pursuant to section 751(c)(6)(A)(iii) of the Act, any subsequent five-year review of this finding will be initiated not later than the fifth anniversary of the effective date of continuation of this finding.

Normally, the effective date of continuation of a finding, order, or suspension agreement will be the date of publication in the **Federal Register** of the Notice of Continuation. As provided in 19 CFR 351.218(f)(4), the Department will issue its determination to continue a finding, order, or suspended investigation not later than seven days after the date of publication in the **Federal Register** of the Commission's determination concluding the sunset review and immediately thereafter will publish its notice of continuation in the **Federal Register**. In the instant case, however, the Department's publication of the Notice of Continuation was delayed. The Department has explicitly indicated that the effective date of continuation of this finding is August 6, 1999, seven days after the publication in the **Federal Register** of the Commission's determination. As a result, pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this finding not later than July 2004.

Dated: August 26, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–22792 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839, A–583–833]

Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Vincent Kane (Republic of Korea) or Alysia Wilson (Taiwan), AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0176 or 482–0108, respectively.

Postponement of Preliminary Determinations

On April 29, 1999, the Department of Commerce (the Department) published its notice of initiation of antidumping investigations of certain polyester staple fiber from the Republic of Korea and Taiwan. *See Initiation of Antidumping Duty Investigations: Certain Polyester Staple Fiber from the Republic of Korea and Taiwan,* 64 FR 23053, 23055. The notice stated we would issue our preliminary determinations by September 9, 1999.

On August 16, 1999, pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), E.I. DuPont de Nemours, Inc.; Arteva Specialities S.a..r.l., d/b/a KoSa; Wellman, Inc.; and Intercontinental Polymers, Inc. (the petitioners)[1] requested that the Department postpone the issuance of the preliminary determinations in these investigations. The petitioners' request for postponement was timely, and the Department finds no compelling reason to deny the request. Therefore, we are postponing the deadline for issuing these determinations until no later than September 29, 1999.

This extension and notice are in accordance with section 733(c) of the Act.

Dated: August 25, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–22786 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Continuation of Antidumping Duty Order: Sebacic Acid From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping duty order: Sebacic acid from the People's Republic of China.

SUMMARY: On April 7, 1999, the Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (''the Act''), determined that revocation of the antidumping duty order on sebacic acid from the People's Republic of China would likely to lead to continuation or recurrence of dumping (64 FR 16910 (April 7, 1999)). On May 19, 1999, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on sebacic acid from the People's Republic of China would likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 27297 (May 19, 1999)). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on sebacic acid from the People's Republic of China.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: May 26, 1999.

Background

On December 2, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 66527 and 63 FR 66567, respectively) of the antidumping duty order on sebacic acid from the People's Republic of China pursuant to section 751(c) of the Act. As a result of this review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked (see Final Results of Expedited Sunset Review: Sebacic Acid from the People's Republic of China, 64 FR 16910 (April 7, 1999)).

On May 19, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on sebacic acid from the People's Republic of China would likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Sebacic acid from the People's Republic of China,* 64 FR 27297 (May 19, 1999) and USITC Pub. 3189, Inv. No. 731–TA–653 (Review) (May 1999)).

Scope

The merchandise covered by this antidumping duty order is all grades of sebacic acid, a dicarboxylic acid with the formula (CH2)8(COOH)2, which include but are not limited to CP Grade (500ppm maximum ash, 25 maximum APHA color), Purified Grade (1000ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500ppm maximum ash, 70 maximum ICV color), from the People's Republic of China. The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85

[1] E.I. DuPont de Nemours, Inc. is not a petitioner in the Taiwan case.

percent dibasic acids of which the predominant species is the C10 dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake. Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings. Sebacic acid is currently classifiable under subheading 2917.13.00.00 of the Harmonized Tariff Schedule (HTS). The HTS subheading/ item number is provided for convenience and customs purposes. The written product description of the scope of this proceeding remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on sebacic acid from the People's Republic of China. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. Pursuant to section 751(c)(6)(A)(iii) of the Act, any subsequent five-year review of this order will be initiated not later than the fifth anniversary of the effective date of continuation of this order.

Normally, the effective date of continuation of a finding, order, or suspension agreement will be the date of publication in the **Federal Register** of the Notice of Continuation. As provided in 19 CFR 351.218(f)(4), the Department normally will issue its determination to continue a finding, order, or suspended investigation not later than seven days after the date of publication in the **Federal Register** of the Commission's determination concluding the sunset review and immediately thereafter will publish its notice of continuation in the **Federal Register**. In the instant case, however, the Department's publication of the Notice of Continuation was delayed. The Department has explicitly indicated that the effective date of continuation of this order is May 26, 1999, seven days after the date of publication in the **Federal Register** of the Commission's determination. As a result, pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this order not later than April 2004.

Dated: August 26, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–22793 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The President's Export Council (PEC) will hold a full Council meeting to discuss topics related to export expansion. The meeting will include briefings on trade priorities and issues, the World Trade Organization, economic sanctions and Virtual Trade Mission activities. The PEC was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. trade. It was most recently renewed by Executive Order 13062.

DATES: September 22, 1999.

TIME: 9:45 a.m. to 3:30 p.m.

ADDRESSES: U.S. Capitol, Room SC–5, Washington, DC, 20510. This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be submitted no later than September 8, 1999, to J. Marc Chittum, President's Export Council, Room 2015B, Washington, DC, 20230. Seating is limited and will be on a first come first serve basis.

FOR FURTHER INFORMATION CONTACT: J. Marc Chittum, President's Export Council, Room 2015B, Washington, DC, 20230 (Phone: 202–482–1124).

Dated August 25, 1999.

J. Marc Chittum,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 99–22727 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–DR–U

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders or Investigations of Carbon Steel Plates and Flat Products

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of five-year (''Sunset'') reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating five-year (''Sunset'') reviews of the antidumping and countervailing duty orders or suspended investigations listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notices of *Institution of Five-Year Reviews* covering these same orders.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Scott E. Smith, or Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1560, (202) 482–6397 or (202) 482–5050, respectively, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205-3176.

SUPPLEMENTARY INFORMATION:

Initiation of Reviews

In accordance with 19 CFR 351.218 (*see Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998)), we are initiating sunset reviews of the following antidumping and countervailing duty orders or suspended investigations:

DOC case No.	ITC case No.	Country	Product
A–583–080	AA–197	Taiwan	Carbon Steel Plate.
C–401–401	C–231	Sweden	Carbon Steel Products.
C–423–806	C–319	Belgium	Cut-to-Length Carbon Steel Plate.
C–351–818	C–320	Brazil	Cut-to-Length Carbon Steel Plate.

DOC case No.	ITC case No.	Country	Product
C–427–810	C–348	France	Corrosion-Resistant Carbon Steel Flat Products.
C–428–817	C–322	Germany	Cut-to-Length Carbon Steel Plate.
C–428–817	C–349	Germany	Corrosion-Resistant Carbon Steel Flat Products.
C–428–817	C–340	Germany	Cold-Rolled Carbon Steel Flat Products.
C–580–818	C–342	Korea	Cold-Rolled Carbon Steel Flat Products.
C–580–818	C–350	Korea	Corrosion-Resistant Carbon Steel Flat Products.
C–201–810	C–325	Mexico	Cut-to-Length Carbon Steel Plate.
C–469–804	C–326	Spain	Cut-to-Length Carbon Steel Plate.
C–401–804	C–327	Sweden	Cut-to-Length Carbon Steel Plate.
C–412–815	C–328	United Kingdom	Cut-to-Length Carbon Steel Plate.
A–602–803	A–612	Australia	Corrosion-Resistant Carbon Steel Flat Products.
A–423–805	A–573	Belgium	Cut-to-Length Carbon Steel Plate.
A–351–817	A–574	Brazil	Cut-to-Length Carbon Steel Plate.
A–122–822	A–614	Canada	Corrosion-Resistant Carbon Steel Flat Products.
A–122–823	A–575	Canada	Cut-to-Length Carbon Steel Plate.
A–405–802	A–576	Finland	Cut-to-Length Carbon Steel Plate.
A–427–808	A–615	France	Corrosion-Resistant Carbon Steel Flat Products.
A–428–815	A–616	Germany	Corrosion-Resistant Carbon Steel Flat Products.
A–428–814	A–604	Germany	Cold-Rolled Carbon Steel Flat Products.
A–428–816	A–578	Germany	Cut-to-Length Carbon Steel Plate.
A–588–826	A–617	Japan	Corrosion-Resistant Carbon Steel Flat Products.
A–580–816	A–618	Korea	Corrosion-Resistant Carbon Steel Flat Products.
A–580–815	A–607	Korea	Cold-Rolled Carbon Steel Flat Products.
A–201–809	A–582	Mexico	Cut-to-Length Carbon Steel Plate.
A–421–804	A–608	Netherlands	Cold-Rolled Carbon Steel Flat Products.
A–455–802	A–583	Poland	Cut-to-Length Carbon Steel Plate.
A–485–803	A–584	Romania	Cut-to-Length Carbon Steel Plate.
A–469–803	A–585	Spain	Cut-to-Length Carbon Steel Plate.
A–401–805	A–586	Sweden	Cut-to-Length Carbon Steel Plate.
A–412–814	A–587	United Kingdom	Cut-to-Length Carbon Steel Plate.

Statute and Regulations

Pursuant to sections 751(c) and 752 of the Act, an antidumping (''AD'') or countervailing duty (''CVD'') order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*''). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (''Sunset Policy Bulletin'').

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the *Sunset Regulations* and *Sunset Policy Bulletin,* the Department's schedule of sunset reviews, case history information (*e.g.,* previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset internet website at the following address: ''http://www.ita.doc.gov/import_admin/records/sunset/''.

All submissions in the sunset review must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303 (1998). Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. We ask that parties notify the Department in writing of any additions or corrections to the list. We also would appreciate written notification if you no longer represent a party on the service list.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306 (*see Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order,* 63 FR 24391 (May 4, 1998)).

Information Required From Interested Parties

Domestic interested parties (defined in 19 CFR 351.102 (1998)) wishing to participate in the sunset review must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(1)(ii). We note that the Department considers each of the orders listed above as separate and distinct orders and, therefore, requires order-specific submissions. Because the case number is the same for three countervailing duty orders from Germany and two countervailing duty orders from Korea covering different products, we request that all submissions clearly identify the order for which the submission is being made by product name as listed above. In accordance with the *Sunset Regulations,* if we do not receive a notice of intent

to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.

If we receive a notice of intent to participate from a domestic interested party, the *Sunset Regulations* provide that *all parties* wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(3). Note that certain information requirements differ for foreign and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the *Sunset Regulations* for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR part 351 (1998) for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: August 26, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–22787 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board (CSSPAB) will meet Tuesday, September 14, 1999, and Wednesday, September 15, 1999, from 9:00 a.m. to 5:00 p.m. and Thursday, September 16, 1999 from 9:00 a.m to 2:00 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. All sessions will be open to the public. Details regarding the Board's activities are available at http://csrc.nist.gov/csspab/.

DATES: The meeting will be held on September 14 and 15, 1999, from 9:00 a.m. to 5:00 p.m. and on September 16, 1999, from 9:00 a.m. until 2:00 p.m.

ADDRESSES: The meeting will take place at the National Institute of Standards and Technology, Gaithersburg, MD, Administration Building, Lecture Room B.

Agenda

—Welcome and Overview
—Issues Update and Briefings
—Federal Intrusion Detection Network Briefing
—Office of Management and Budget/ Office of Information and Regulatory Affairs Briefing
—Briefing on the Activities of the Transatlantic Consumer Dialogue Privacy Coalition
—NIST Computer Security Updates
—Planning for Security Program Metrics Workshop
—Pending Business/Discussion
—Public Participation
—Agenda Development for December 1999 Meeting
—Wrap-Up

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters.

Public Participation: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the CSSPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. It would be appreciated in 35 copies of written material were submitted for distribution to the Board and attendees no later than September 13, 1999. Approximately 15 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Roback, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–3696.

Dated: August 23, 1999.

Karen Brown,

Deputy Director, NIST.

[FR Doc. 99–22731 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a closed meeting of the Judges Panel of the Malcolm Baldrige National Quality Award on Thursday, September 23, 1999. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the consensus process, determine possible conflict of interest for site visited companies, select applicants for site visits, begin stage III of the judging process, and review feedback to first stage applicants. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene September 23, 1999 at 9:00 a.m. and adjourn at 4:30 p.m. on September 23, 1999. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building Tenth Floor Conference Room, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on April 26, 1999, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation (*Sunset Regulations*, 19 CFR 351.218(d)(4)). As provided in 19 CFR 351.302(b) (1998), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Public Law 94–409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: August 23, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–22730 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990416102–9232–02]

RIN 0648–ZA64

Notice and Request for Proposals; Correction

AGENCY: National Weather Service (NWS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Request for proposals; correction.

SUMMARY: NOAA/NWS Collaborative Science, Technology, and Applied Research Program issued a Request for Proposals on June 10, 1999. This notice will correct and clarify two issues from the Request for Proposals.

FOR FURTHER INFORMATION CONTACT: Sam Contorno, 301–713–1970 ext. 193, or fax to 301–713–1520, or on the Internet at samuel.contorno@noaa.gov.

Correction

In the **Federal Register** issue dated June 10, 1999, 64 FR 31188–31192 make the following corrections to clarify information regarding principal investigators and proposal submissions. On page 64 FR 31189, line 25 in third column, under ''Program Priorities'' insert the following text:

A proposal must be submitted by multiple principal investigators from the same college or university. NOAA or other Government employees are not allowed to be listed as principal investigators, although collaboration between the academic community and NOAA within the project is strongly encouraged.

On page 31191, second column, under ''Proposal Submission,'' add as the third sentence the following:

Failure to be in compliance with or address all 5 elements under ''Proposals,'' all 7 elements under ''Required Elements,'' and all 13 elements under ''Other Requirements,'' by the deadline of October 1, 1999, will result in proposals being returned to the submitter.

Authority: 15 U.S.C. 313; 49 U.S.C. 44720 (b); 33 U.S.C. 883d, 883e; 15 U.S.C. 2904; 15 U.S.C. 2931 et seq.

(CFDA No. 11.468)—Applied Meteorological Research.

Dated: August 26, 1999.

John J. Kelly, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 99–22772 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–KE–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082399E]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held on September 13–16, 1999.

ADDRESSES: These meetings will be held at the Gulf State Park Resort Hotel, 21250 East Beach Boulevard, Gulf Shores, AL; telephone: 334–948–4853.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: Council

September 14

8:30 a.m.—Convene.

8:45 a.m. - 9:30 a.m.—Receive public testimony on the Shrimp Bycatch Reduction Device (BRD) Certification Standard.

9:30 a.m. - 10:00 a.m.—Receive the Shrimp Management Committee Report.

10:00 a.m. - 12:00 p.m.—Receive the Mackerel Management Committee Report.

1:30 p.m. - 1:45 p.m.—Receive the Budget Committee Report.

1:45 p.m. - 3:45 p.m.—Receive the Joint Reef Fish/Mackerel Management Committee Report.

3:45 p.m. - 4:45 p.m.—Receive the Ad Hoc Marine Reserves Committee Report.

4:45 p.m. - 5:15 p.m.—(Closed Session) Receive the Advisory Panel (AP) Selection Committee report and the Scientific and Statistical Committee (SSC) Selection Committee Report.

Thursday, September 16

8:30 a.m. - 8:45 a.m.—Receive the AP Selection Committee report and the SSC Selection Committee Report.

8:45 a.m. - 9:45 a.m.—Receive the Reef Fish Management Committee Report.

9:45 a.m. - 10:15 a.m.—Receive the Ad Hoc Vessel Monitoring System (VMS) Committee Report.

10:15 a.m. - 10:30 a.m.—Receive Enforcement Reports.

10:30 a.m. - 10:45 a.m.—-Receive the International Commission for the Conservation of Atlantic Tunas (ICCAT) Advisory Committee Report.

10:45 a.m. - 11:00 a.m.—-Receive the NMFS Highly Migratory Species/Billfish APs Report.

11:00 a.m. - 11:30 a.m.—Receive Director's Reports.

11:30 a.m.- 11:45 a.m.—Other Business.

11:45 a.m. - 12:00 p.m.—-Election of Chairman and Vice Chairman.

September 13

10:00 a.m. - 11:00 a.m.—(Closed Session) Convene the AP Selection Committee to select members for a Dolphin/Wahoo AP.

11:00 a.m. - 11:30 a.m.—(Closed Session) Convene the SSC Selection Committee to select members for a special Dolphin/Wahoo SSC.

1:00 p.m. - 2:00 p.m.—Convene the Budget Committee to hear a status report on the CY 1999 budget and develop its recommendations to the Council on the CY 2000 budget.

2:00 p.m. - 3:00 p.m.—-Convene the Shrimp Management Committee to hear recommendations from the BRD Evaluation AP and develop recommendations to the Council.

3:00 p.m. - 5:30 p.m.—-Convene the Mackerel Management Committee to review an options paper for a joint Dolphin/Wahoo Fishery Management Plan (FMP) between the Gulf, South Atlantic, and Caribbean Fishery Management Councils.

September 14

8:00 a.m. - 10:30 a.m.—Convene the Joint Reef Fish/Mackerel Management Committees to review a preliminary options paper on a charter vessel permit moratorium and develop recommendations to the Council.

10:30 a.m. - 12:00 p.m.—-Convene the Ad Hoc Vessel Monitoring System Committee to consider a Law Enforcement Committee recommendation that certain vessels be required to have VMS.

1:30 p.m - 3:30 p.m.--Convene the Reef Fish Management Committee to hear a status report on the red snapper regulatory amendment, NMFS recommendation for management of the red snapper recreational fishery, a report on a NMFS red snapper stakeholders meetings, and select stocks for which assessments will be completed in 2000.

3:30 p.m. - 5:30 p.m.--Convene the Ad Hoc Marine Reserves Committee to hear a summary of the marine reserves workshops and develop recommendations for future Council actions regarding marine reserves.

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by September 3, 1999.

Dated: August 25, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–22670 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

August 26, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 67046, published on December 4, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 26, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on September 1, 1999, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Group I	
200, 218, 219, 226, 237, 239, 300/301, 313–315, 317/326, 331, 333–336, 338/339, 340–342, 345, 347/348, 350–352, 359–C [2], 359–V [3], 360–363, 369–D [4], 369–H [5], 369–L [6], 410, 433-436, 438, 440, 442–444, 445/446, 447, 448, 607, 611, 613–615, 617, 631, 633–636, 638/639, 640–643, 644/844, 645/646, 647–652, 659–C [7], 659–H [8], 659–S [9], 666, 669–P [10], 670–L [11], 831, 833, 835, 836, 840, 842 and 845–847, as a group.	1,499,477,833 square meters equivalent.
Sublevels in Group I	
218	12,088,817 square meters.
219	2,598,589 square meters.
226	11,799,484 square meters.
300/301	2,447,836 kilograms.
313	45,130,973 square meters.
315	134,976,464 square meters
317/326	23,084,333 square meters of which not more than 4,416,487 square meters shall be in Category 326.
333	106,070 dozen.
334	348,606 dozen.
335	415,480 dozen.
338/339	2,497,322 dozen of which not more than 1,807,420 dozen shall be in Categories 338–S/339–S [12].
345	138,065 dozen.
359–V	953,366 kilograms.
360	8,390,603 numbers of which not more than 5,637,250 numbers shall be in Category 360–P [13].
369–H	5,384,841 kilograms.
410	1,068,980 square meters of which not more than 856,904 square meters shall be in Category 410–A [14] and not more than 832,958 square meters shall be in Category 410–B [15].
434	14,266 dozen.
435	26,201 dozen.
436	16,142 dozen.

Category	Adjusted twelve-month limit [1]
440	40,355 dozen of which not more than 23,060 dozen shall be in Category 440–M [16].
442	42,718 dozen.
444	221,400 numbers.
448	23,837 dozen.
607	3,501,206 kilograms.
611	5,805,019 square meters.
613	8,214,096 square meters.
615	26,871,825 square meters.
617	18,488,346 square meters.
631	1,405,714 dozen pairs.
634	674,075 dozen.
635	711,031 dozen.
636	591,193 dozen.
641	1,405,431 dozen.
645/646	882,834 dozen.
659–C	442,698 kilograms.
669–P	2,182,500 kilograms.
831	607,624 dozen pairs.
833	31,243 dozen.
842	290,440 dozen.
845	2,508,679 dozen
846	191,644 dozen.
Levels not in a Group	
369–S [17]	626,103 kilograms.
863–S [18]	8,834,854 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[4] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[5] Category 369–H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[6] Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905.

[7] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[9] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[10] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[11] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

[12] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[13] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[14] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[15] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[16] Category 440–M: Only HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.3020, 6205.90.4020 and 6211.31.0030.

[17] Category 369–S: only HTS number 6307.10.2005.

[18] Category 863–S: only HTS number 6307.10.2015.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–22729 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

August 26, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 60308, published on November 9, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 26, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man–made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on September 1, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
326	2,578,853 square meters.
334/634	279,758 dozen.
335/635/835	223,496 dozen.
336/636	256,893 dozen.
338/339	805,254 dozen of which not more than 486,363 dozen shall be in Categories 338–S/339–S [2].
340/640	428,906 dozen.
341/641	437,139 dozen.
342/642	347,281 dozen.
347/348	544,616 dozen of which not more than 286,312 dozen shall be in Categories 347–T/348–T [3].
351/651	228,004 dozen.
352	134,151 dozen.
363	7,385,494 numbers.
369–O [4]	848,756 kilograms.
369–S [5]	119,659 kilograms.
638/639	325,573 dozen.
647/648	422,783 dozen.

Category	Adjusted twelve-month limit [1]
847	91,275 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[3] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[4] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[5] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–22728 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of intent to renew information collection 3038–0043—Rules relating to review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions.

SUMMARY: The Commodity Futures Trading Commission is planning to renew information collection 3038–0043, Rules Relating to Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions, which is due to expire November 30, 1999. 17 CFR part 171 rules require a registered futures association to provide fair and orderly procedures for membership and disciplinary actions. The Commission's review of decisions of registered futures associations in disciplinary, membership denial, registration, and member responsibility actions is governed by Section 17(h)(2) of the Commodity Exchange Act, 7 U.S.C. Section 21(h)(2) (1994). The rules establish procedures and standards for Commission review of such actions, and the reporting requirements included in the procedural rules are either directly required by Section 17 of the Act or are necessary to the type of appellate review role Congress intended the Commission to undertake when it adopted that provision.

In compliance with the Paperwork Reduction Act of 1995, the Commission solicits comments to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

DATES: Comments must be received on or before November 1, 1999.

ADDRESS: Persons wishing to comment on this information collection should contact the CFTC Clearance Officer, 1155 21st Street NW, Washington, DC 20581, (202) 418–5160.

Title: Rules Relating to Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions.

Control number: 3038–0043.

Action: Extension.

Respondents: National Futures Association and parties to Part 171 proceedings.

Estimated Annual Burden: 126 hours.

Respondents	Regulation (17 CFR)	Estimated number of respondents	Annual responses	Est. avg. hours per response
National Futures association and parties to Part 171 proceedings	Part 171	14	55	3.5

Issued in Washington, D.C. on August 26, 1999.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 99–22736 Filed 8–31–99; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, September 3, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 99–22812 Filed 8–27–99; 4:31 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, September 10, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 99–22813 Filed 8–27–99; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, September 17, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 99–22814 Filed 8–27–99; 4:31 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading.

TIME AND DATE: 11:00 a.m., Friday, September 24, 1999.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 99–22815 Filed 8–27–99; 4:31 pm]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

The Corporation for National and Community Service (hereinafter the ''Corporation'') has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, (44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Office of Evaluation, Carol Hafford, (202) 606–5000, extension 232. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information to those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Corporation for National and Community Service.

Title: AmeriCorps*VISTA 1999 Project Accomplishment Survey.

OMB Number: 3045–0020 (expired).

Agency Number: None.

Affected Public: AmeriCorps*VISTA projects that have been active for at least nine months prior to September 30, 1999.

Total Respondents: FY 1999—946; FY 2000—1,182, FY 2001—1,182.

Frequency: Annually.

Average Time Per Response: FY 1999—1 hour; FY 2000—30 minutes; FY 2001—30 minutes.

Estimated Total Burden Hours: FY 1999—946 hours; FY 2000—591 hours; FY 2001—591 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Description

One of the missions of the Corporation is to ''provide opportunities to engage in service that addresses the nation's unmet human, educational, environmental, and public safety needs'' (42 U.S.C. 12501(b)). Through the AmeriCorps*VISTA (Volunteers in Service to America) program, the Corporation supports VISTA's 34 year mission to engage Americans in community service activities and build the capacity of low-income communities. AmeriCorps*VISTA activities address issues of poverty and poverty-related problems by generating private sector resources, encouraging volunteer service at the local level, and strengthening the capacity of local organizations and agencies to meet the needs of low-income communities.

VISTA is a full-time, full-year service program for men and women ages 18 and older. AmeriCorps*VISTA places federally funded national service participants in ongoing programs managed by public agencies or private, nonprofit organizations. AmeriCorps*VISTA members work within these agencies or organizations to help them expand services to people in economically disadvantaged communities. Members are involved in a wide variety of community-oriented efforts, such as developing literacy programs, organizing outreach programs in health care, training low-income people in business management, and establishing transitional housing programs for the homeless. Since 1996, the Corporation has conducted an annual survey and collected data from AmeriCorps*VISTA projects to describe program accomplishments. These responses assist the Corporation in addressing policy and programming issues about AmeriCorps*VISTA and

the projects it supports throughout the country.

Therefore, the Corporation seeks approval of a survey form to collect data from a sample of AmeriCorps*VISTA projects. The 1999 AmeriCorps*VISTA Project Accomplishments Survey will be administered by mail. In FY 2000 and FY 2001 the data will be collected through a computerized data tracking system. The survey will cover VISTA project activities and accomplishments during the 12-month period of October 1, 1998, through September 30, 1999. Approximately 1,182 projects will be surveyed, of which we expect 946 respondents. The survey will collect data on project characteristics and on specific AmeriCorps*VISTA activities and accomplishments in each of seven program emphasis areas and in organizational capacity building. Accomplishment data from the FY 1999 survey will be used to provide a report on AmeriCorps*VISTA accomplishments to the Congress in FY 2000 and to satisfy the Government and Performance and Results Act of 1993 requirements.

Dated: August 26, 1999.

Thomasenia P. Duncan,

General Counsel.

[FR Doc. 99–22665 Filed 8–31–99; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Request for Extension, Without Change, of a Previously Approved Information Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and Request for Comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (DOT) intention to request extension without change, of a previously approved information collection.

DATES: Comments on this notice must be received by November 1, 1999.

ADDRESSES: Comments should be sent to the Special Authorities Division (X–57), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0002.

FOR FURTHER INFORMATION CONTACT: Ms. Torlanda Archer or Mr. Charles McGuire, Office of the Secretary, Office of Aviation Analysis, X–57, Department of Transportation, at the above address. Telephone (202) 366–1037.

SUPPLEMENTARY INFORMATION:

Title: Aviation Charter Rules.

OMB Control Number: 2106–0005.

Expiration Date: October 31, 1999.

Type of Request: Extension without change, of a previously approved information collection.

Abstract: In 14 CFR Part 380 (adopted 1979) of its Special Regulations the Department established the terms and conditions governing the furnishing of Public Charters in air transportation by direct air carriers and Public Charter operators. Public Charter operators arrange transportation for groups of persons on aircraft chartered from direct air carriers. This arrangement is less expensive for the travelers than individually buying a ticket. Further, the charter operator books hotel rooms, tours, etc., at destination for the convenience of the traveler. Part 380 exempts charter operators from certain provisions of the U.S. Code in order that they may provide this service.

A primary goal of Part 380 is to seek protection for the consumer. Accordingly, the rule stipulates that the charter operator must file evidence (a prospectus) with the Department for each charter program certifying that it has entered into a binding contract with a direct air carrier to provide air transportation and that it has also entered into agreements with Department-approved financial institutions for the protection of charter participants' funds. The prospectus must be approved by the Department prior to the operator's advertising, selling or operating the charter. The forms (OST Forms 4532, 4533, 4534 and 4535) that comprise the operator's filing is the information collection at issue here.

In September 1992, the Department issued a notice of proposed rulemaking (NPRM), [57 FR 42864, 9–16–92) to propose, among other revisions, that charter operators need no longer file prospectuses. The NPRM was in response to comments that prospectus filings were burdensome and unnecessary. However, the majority of respondents to the NPRM urged the Department to retain the existing prospectus filing requirements because they desired the more complete consumer protection provided by the current rule. Without a complete prospectus it would be extremely difficult to assure that financial security and other consumer protection requirements are in place for each Public Charter operation.

On May 22, 1998 the Department of Transportation published a Final Rule amending its charter air transportation regulations to update the rules, make changes reflecting current operating procedures and including the following specific modifications:

Eliminate the 10-day waiting period after the filing of a prospectus or an amendment before Public Charters may be advertised or sold;

Allow charter operators to accept payment by credit cards for Public Charter flights;

Delete the minimum contract size of 20 seats for passenger charters;

Permit direct air carriers to sell charter flights within 7 days of departure;

Codify the Department's practice allowing a ''sub-operator'' to buy into another Public Charter operator's prospectus as a principal;

Eliminate the requirement for a brief or ''mini'' prospectus to be filed by direct air carriers conducting foreign-originating flights for foreign charter operators;

Consolidate the rules applicable to U.S. and foreign direct air carriers into a single part; and

Broaden the definitions of ''immediate family'' in parts 212 and 380 to include the member's (or student participant's) spouse, children, and parents, whether or not they share a household with the member. This action is taken at the Department's initiative and responds to President Clinton's Regulatory Reinvention Initiative.

With these exceptions, the Department decided not to adopt many of the rule changes proposed in the NPRM. The Final Rule includes a full discussion of comments offered to the NPRM and the reasons for adopting or not adopting proposed changes in the rule. No comments have been received on the Final Aviation Charter Rules.

The collection involved here under 14 CFR part 380 requests general information about the charter operator and direct air carrier that will provide a Public Charter and requires each to certify that it has contracted with the other to provide the transportation. The routing, charter price and tour itinerary of the proposed charter are also identified. The collection also requires the charter operator, direct air carrier and financial institution(s) involved to certify that proper financial instruments are in place or other arrangements have been made to protect the charter participants' funds and that all parties will abide by the Department's Public Charter regulations.

Respondents: Public Charter operators.

Estimated Number of Respondents: 316.

Average Annual Burden per respondents: 4.25 hours.

Estimated Total Burden on Respondents: 1,343 hours.

The information collection is available for inspection at the Special Authorities Division (X–57), Office of Aviation Analysis, DOT, at the address above. Copies of 14 CFR part 380 can be obtained from Ms. Torlanda Archer at the address and telephone number shown above.

Comments Are Invited On

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC on August 26, 1999.

John V. Coleman,

Office of Aviation Analysis.

[FR Doc. 99–22698 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD

ACTION: Notice to amend record systems.

SUMMARY: The Department of the Air Force proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on October 1, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 588–6187.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice as amended, published in its entirety.

Dated: August 25, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AFRE A

SYSTEM NAME:

Statutory Tour Program *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Personnel Directorate, Office of Air Force Reserve, Headquarters U.S. Air Force, 1150 Air Force Pentagon, Washington, DC 20330-1150.'

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Approval/disapproval on original correspondence relating to the application, Department of the Air Force Orders, comments from Deputy to the Chief of Air Force Reserve and Deputy Assistant Secretary of the Air Force (Reserve Affairs).'

* * * * *

PURPOSE(S):

Delete entry and replace with 'Documentary support of tour applications; approval/disapproval; initiation, termination and extension of statutory tours; used as historical reference; used by Air Reserve Forces Advisors as record of approval/ disapproval, authority to issue Department of the Air Force Special Orders, by the Deputy to the Chief of Air Force Reserve and Deputy Assistant Secretary of the Air Force (Reserve Affairs).'

* * * * *

SAFEGUARDS:

Add to entry 'Database is password access only.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief, Senior Officer Management, Personnel Directorate, Office of Air Force Reserve, Headquarters U.S. Air Force, 1150 Air Force Pentagon, Washington, DC 20330-1150.

* * * * *

F036 AFRE A

SYSTEM NAME:

Statutory Tour Program.

SYSTEM LOCATION:

Personnel Directorate, Office of Air Force Reserve, Headquarters U.S. Air Force, 1150 Air Force Pentagon, Washington, DC 20330-1150.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Reserve Component Officers (United States Air Force Reserve/Air National Guard United States) on Extended Active Duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Approval/disapproval on original correspondence relating to the application, Department of the Air Force Orders, comments from Deputy to the Chief of Air Force Reserve and Deputy Assistant Secretary of the Air Force (Reserve Affairs).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. Chapter 11, Reserve Components; Chapter 805, The Air Staff; Chapter 841, Active Duty; 32 U.S.C. Chapter 7, Service, Supply and Procurement, Section 708 - Regulatory Authority; implemented by Air Force Instruction 36-2116, Extended Active Duty for Reserve Component Officers.

PURPOSE(S):

Documentary support of tour applications; approval/disapproval; initiation, termination and extension of statutory tours; used as historical reference; used by Air Reserve Forces Advisors as record of approval/ disapproval, authority to issue Department of the Air Force Special Orders, by the Deputy to the Chief of Air Force Reserve and Deputy Assistant Secretary of the Air Force (Reserve Affairs).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C.

552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/ cabinets, and on electronic media for statistical analysis.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms. Controlled entry building. Database is password access only.

RETENTION AND DISPOSAL:

Retained two years after completion of tour. Retained for two years after end of year in which the case was closed, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Senior Officer Management, Personnel Directorate, Office of Air Force Reserve, Headquarters U.S. Air Force, 1150 Air Force Pentagon, Washington, DC 20330-1150.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit Personnel Directorate, Office of Air Force Reserve, Headquarters U.S. Air Force, 1150 Air Force Pentagon, Washington, DC 20330-1150.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit Personnel Directorate, Office of Air Force Reserve, Headquarters U.S. Air Force, 1150 Air Force Pentagon, Washington, DC 20330-1150.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Member's application and correspondence generated in transmission and consideration of the application.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–22570 Filed 8–31–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend record systems.

SUMMARY: The Department of the Air Force proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on October 1, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 203301250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 5886187.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice as amended, published in its entirety.

Dated: August 25, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F035 AF SAFPA B

SYSTEM NAME:

Hometown News Release Background Data File *(June 11, 1997, 62 FR 31793).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'F035 AF AFNEWS A'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Add to entry 'Under certain categories, DoD civilians are also authorized to participate.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Records are accessed by person(s) responsible for servicing the record system in performance of their official duties, and by authorized personnel who are properly screened and cleared for need-to know. Records are stored in locked cabinets and rooms. Those in computer storage devices are protected by computer system software.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Disposition pending. No records will be destroyed until authorization is granted from the National Archives and Records Administration. All records will be retained until approval is granted.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief, Print Division, Army and Air Force Hometown News Service, 203 Norton Street, Kelly Air Force Base, TX 78241-6105.'

* * * * *

F035 AF AFNEWS A

SYSTEM NAME:

Hometown News Release Background Data File.

SYSTEM LOCATION:

Headquarters Air Force News Agency, 203 Norton Street, Kelly Air Force Base, TX 78241-6105. Subsystems of the main system may be located at the Public Affairs Office at the Army/Air Force Base, Army/Air National Guard or Army/Air Force Reserve or similar installation to which an individual is assigned.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army/Air Force active duty military personnel, Army/Air Force Reserve Army/Air National Guard personnel recently selected for promotion, reassigned, awarded a medal or decoration, or who otherwise participated in a newsworthy event. Under certain categories, DoD civilians are also authorized to participate.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical information including, but not necessarily limited to name, Social Security Number, current grade, marital status, local address, name and address of parents or guardians, educational background and military history, photographs. Information is usually, but not necessarily, contained in an Information for Hometown News Release Form, DD form 2266, or similar form.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force, and 8034, and E.O. 9397 (SSN).

PURPOSE(S):

Preparation of news releases for distribution to newspapers and broadcast stations throughout the United States.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from this system of records may be disclosed to the media as part of a news release.

The 'Blanket Routine Uses' that appear at the beginning of the Air Force's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and visible file binders/cabinets, as well as on computers and computer output products.

RETRIEVABILITY:

Retrieved by name and Social Security Number within date of release.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties, and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked cabinets and rooms. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Disposition pending. No records will be destroyed until authorization is granted from the National Archives and Records Administration. All records will be retained until approval is granted.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Print Division, Army and Air Force Hometown News Service, Kelly Air Force Base, TX 78241–6105.

NOTIFICATION PROCEDURE:

Individual seeking to determine whether this system of records contains information about themselves should address written requests to or visit the Print Division, Army and Air Force Hometown News Service, 203 Norton Street, Kelly Air Force Base, TX 78241–6105. Inquiries about a subsystem should be addressed to the Public Affairs Officer at the base or installation of the individual's assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to or visit the Print Division, Army and Air Force Hometown News Service, 203 Norton Street, Kelly Air Force Base, TX 78241–6105 or the installation Public Affairs Officer. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and contesting contents and appealing initial determinations are published in Air Force Instruction 37–132, 32 CFR part 806b, or maybe obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–22571 Filed 8–31–99; 8:45 am]
BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.
ACTION: Notice to delete a system of records.

SUMMARY: The Defense Logistics Agency is deleting a system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The system of records is not subject to the provisions of the Privacy Act of 1974. In this case, the records cover entities that have been given Federal contracts to investigate EEO complaints. Because these contractors are acting in an entrepreneurial capacity rather than a personal capacity, they do not meet the definition of 'individuals' as contemplated by the Office of Management and Budget in their formal guidelines to federal agencies in implementing the Privacy Act (July 9, 1975, 40 FR 28948).
DATES: This proposed action will be effective without further notice on October 1, 1999, unless comments are received which result in a contrary determination.
ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.
FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.
SUPPLEMENTARY INFORMATION: The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 25, 1999.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

S390.01 DLA-KE

SYSTEM NAME:

Grievance Examiners and Equal Employment Opportunity (EEO)

Investigators Program *(February 22, 1993, 58 FR 10854).*

Reason: It has been determined that the notice is not required by the Privacy Act. In this case, the records cover entities that have been given Federal contracts to investigate EEO complaints. Because these contractors are acting in an entrepreneurial capacity rather than a personal capacity, they do not meet the definition of 'individuals' as contemplated by the Office of Management and Budget in their formal guidelines to federal agencies in implementing the Privacy Act (July 9, 1975, 40 FR 28948).

[FR Doc. 99–22572 Filed 8–31–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 1, 1999.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 27, 1999.

Joseph Schubart,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: New.

Title: Electronic Debit Payment Option for Student Loans.

Frequency: One time.

Affected Public: Individuals or households; Federal Government.

Reporting and Recordkeeping Burden: Responses: 108,541; Burden Hours: 2 minutes each.

Abstract: The need for an Electronic Debit Account Program will give the borrower another option in which to repay federally funded student loans via automatic debit deductions from their checking accounts.

Written comments or requests for copies of the proposed information collection request should be addressed to Vivian Reese, U.S. Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the Internet address OCIO__IMG__Issues@ed.gov, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Joseph Schubart at 202–708–9266 or by e-mail at joe__schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–22732 Filed 8–31–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133B–12]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications and Pre-application Meeting for a New Award for a Rehabilitation Research and Training Center (RRTC) for Fiscal Year (FY) 2000

Purpose

On May 4, 1999 a notice was published in the **Federal Register** (64 FR 23988) inviting applications for a new FY 1999 award for an RRTC on rehabilitation for children with disabilities and special health care needs. Satisfactory applications were not received for this priority area. There is a continuing need for this center.

The purposes of this notice are to: (1) Invite applications for an RRTC on rehabilitation for children with disabilities and special health care needs for FY 2000; and (2) invite interested parties to participate in a pre-application meeting to discuss the funding priority and receive technical assistance through individual consultation and information about the funding priority.

Eligible Applicants: Parties eligible to apply for grants under this program are States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

Applications Available: September 1, 1999.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the funding priority for an RRTC on rehabilitation for children with disabilities and special health care needs and to receive technical assistance through individual consultation and information about the funding priority. The pre-application meeting will be held on September 22, 1999 at the Department of Education, Office of Special Education and Rehabilitative Services, Switzer Building, Room 3065, 330 C St., SW, Washington, DC, between 10 a.m. and 12:00 p.m. NIDRR staff will also be available at this location from 1:30 p.m. to 5 p.m. on that same day to provide technical assistance through individual consultation and information about the funding priority. NIDRR will make alternate arrangements to accommodate interested parties who are unable to

attend the pre-application meeting in person. *Assistance to Individuals With Disabilities at the Public Meeting:*

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed below at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 78, 80, 81, 82, 85, 86, 97; (b) the regulations for this program in 34 CFR Part 350; and (c) the notice of final priorities published on May 4, 1999 in the **Federal Register** (64 FR 23988); and the notice inviting applications published on May 4, 1999 in the **Federal Register** (64 FR 23993).

Deadline for Transmittal of Applications: November 1, 1999.

Maximum Award Amount Per Year: $700,000.

Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

Estimated Number of Awards: 1.

Note: The estimate of funding level and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants.

Project Period: 60 months.

For Applications Contact: Education Publications Center (ED Pubs), PO Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll-free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: http://www.ed.gov/pubs/edpubs.html or you may contact ED Pubs at its E-mail address: edpubs@inet.ed.gov

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202)205–8207. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: In order to obtain further information about the funding priority and the pre-application meeting on the RRTC on rehabilitation for children with disabilities and special health care needs contact Roseann Rafferty, U.S. Department of Education, Room 3428, Switzer Building, 330 C St, S.W., Washington, DC 20202, or call (202) 205–5867. Individuals who use a telecommunications device (TDD) may call the TDD number at (202) 205–4475. Internet: Roseann__Rafferty@ed.gov

Individuals with disabilities may obtain a copy of this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document: You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at:

http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research and Training Centers)

Program Authority: 29 U.S.C. 761a and 762.

Dated: August 27, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–22783 Filed 8–31–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site

AGENCY: U. S. Department of Energy.

ACTION: Amendment to a record of decision.

SUMMARY: The Department of Energy (DOE) has decided to revise the approach to be used to dispose of approximately 3,360 kg of sand, slag and crucible plutonium residues (containing approximately 130 kg of plutonium) that is currently stored at the Rocky Flats Environmental Technology Site. In an earlier Record of Decision on Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site (63 FR 66136, December 1, 1998), DOE decided that the sand, slag and crucible residues would be shipped to the Savannah River Site for processing and storage pending disposition. With the opening of the Waste Isolation Pilot Plant (WIPP) in New Mexico on March 26, 1999, DOE has now decided instead to prepare the sand, slag and crucible residues for direct shipment to the repository for disposal. This will result in final disposition of this material several years earlier than the previous approach and would be more cost effective. The environmental impacts of alternative approaches for management of these residues are presented in the Final Environmental Impact Statement on Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site (the EIS, DOE/EIS–0277F, August 1998).

ADDRESSES: Copies of the EIS, the first and second Records of Decision published by DOE on this subject, and this Amended Record of Decision are available in the public reading rooms and libraries identified in the **Federal Register** notice that announced the availability of the EIS (63 FR 46006, August 28, 1998), or please write or call: Center for Environmental Management Information, P.O. Box 23769, Washington, DC 20026–3769, telephone 1–800–736–3282 (in Washington, DC: 202–863–5084). These documents may also be accessed on the DOE Office of Environmental Management's World Wide Web site at http://www.em.doe.gov/em60/documents.

FOR FURTHER INFORMATION CONTACT: For further information on management of plutonium residues and scrub alloy currently stored at the Rocky Flats Environmental Technology Site, contact: Ms. Patrice M. Bubar, Acting Director, Rocky Flats Office (EM–64), Office of Nuclear Material and Facility Stabilization, Environmental Management, U.S. Department of Energy 1000 Independence Avenue, SW,

Washington, DC 20585, Telephone: 301–903–7130.

For information concerning the EIS, the first or second Records of Decision, or this Amended Record of Decision, contact: Mr. Charles R. Head, Senior Technical Advisor, Office of Nuclear Material and Facility Stabilization, Environmental Management, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone: 202–586–5151.

For further information on DOE's National Environmental Policy Act (NEPA) process, contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone (202) 586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Department of Energy (DOE) issued the Final Environmental Impact Statement on Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site (EIS, DOE/EIS–0277F) in August 1998. In this EIS, DOE assessed the potential environmental impacts of processing certain plutonium residues and scrub alloy currently stored at the Rocky Flats Environmental Technology Site (Rocky Flats) near Golden, Colorado in preparation for disposal or other disposition. These materials were produced during nuclear weapons production activities conducted by DOE during the Cold War, and are no longer needed. DOE is currently conducting activities to safely manage, clean up, and dispose (where appropriate) such intermediate products of its prior nuclear weapons production activities. The plutonium residues analyzed in the EIS include approximately 3,360 kg of sand, slag and crucible residues (containing approximately 130 kg of plutonium).

The EIS evaluated four alternatives for management of the sand, slag and crucible residues, as shown in Table 1.

TABLE 1.—ALTERNATIVES FOR MANAGEMENT OF SAND, SLAG AND CRUCIBLE PLUTONIUM RESIDUES

Alternative 1—No Action:
- Calcination/Cementation at Rocky Flats, followed by storage at Rocky Flats.

Alternative 2—Processing without Plutonium Separation:
- Vitrification at Rocky Flats, in preparation for disposal in WIPP [1], or
- Calcination & Blend Down at Rocky Flats, in preparation for disposal in WIPP

Alternative 3—Process with Plutonium Separation:
- Purex Process at the Savannah River Site, in preparation for disposition of the plutonium as either mixed oxide nuclear fuel or immobilized in highly radioactive waste in a mined geologic repository.

Alternative 4—Combination of Processing Technologies:
- Calcination/Cementation at Rocky Flats, in preparation for disposal in WIPP, or
- Repackaging at Rocky Flats, in preparation for disposal in WIPP.

[1] The ''Waste Isolation Pilot Plant'' is DOE's mined geologic repository for disposal of transuranic radioactive wastes. WIPP is located near Carlsbad, New Mexico. Transuranic is a term for any element whose atomic number is higher than that of uranium (i.e., atomic number 92). All transuranic elements are produced artificially.

II. Original Decision

DOE issued a first Record of Decision (63 FR 66136, December 1, 1998) that covered eight categories of Rocky Flats plutonium residues (including sand, slag and crucible residues) and the scrub alloy.[2] The first Record of Decision stated in Section VII.A.1. that ''DOE has decided to preprocess the sand, slag and crucible residues at the Rocky Flats site and then transport them to the Savannah River Site for stabilization in the F-Canyon. The Purex process will be used to chemically separate the plutonium from the other residue constituents (i.e., Alternative 3). The separated plutonium will then be placed in storage at the Savannah River Site until it is dispositioned as determined by DOE after completion of the Surplus Plutonium Disposition Environmental Impact Statement (DOE/EIS–0283, under preparation, draft issued in July 1998).''

Section VII.A.2. of the first Record of Decision explained that Alternative 3 (processing at the Savannah River Site) was selected because it would provide the most expeditious approach for stabilization of the sand, slag and crucible residues. Because repackaging at Rocky Flats under Alternative 4 (preparation of the sand, slag and crucible residues for disposal in WIPP) also appeared to be a desirable alternative, Section VII.A.2 went on to explain the following:

''Consideration of alternative processing technologies that would result in sending the Rocky Flats sand, slag and crucible residues directly to WIPP for disposal as transuranic waste revealed that significant further characterization of the material would be required to verify its suitability for disposal in WIPP, due to the presence of reactive calcium in the residues. Resolution of the issues raised by the reactive calcium would require (1) further testing to demonstrate that no more than 5 percent of the residues contain enough reactive calcium to be pyrophoric, (2) approval by the Nuclear Regulatory Commission of a change to the WIPP TRUCON Shipping Code to change the allowable passivated calcium metal content from a trace (i.e., less than 1 percent) to a minor (i.e., 1 to 10 percent) constituent, and (3) obtaining WIPP certification of the material. This strategy, if successful, would take about one year longer to implement than processing at the Savannah River Site.''

III. Events Since Issuance of the First Record of Decision

Since issuance of the first Record of Decision, sand, slag and crucible residues have been packaged in preparation for shipment to the Savannah River Site. A small quantity of these residues (approximately 112 kg containing about 2.7 kg of plutonium) has been shipped to the Savannah River Site as test samples to determine how best to process the bulk of the sand, slag and crucible residues yet to be shipped. The shipping schedule for the remainder of the materials has been delayed, however, by approximately one year, while issues associated with certifying a new transportation package continue to be addressed. Meanwhile, the following activities regarding

[1] The ''Waste Isolation Pilot Plant'' is DOE's mined geologic repository for disposal of transuranic radioactive wastes. WIPP is located near Carlsbad, New Mexico. Transuranic is a term for any element whose atomic number is higher than that of uranium (i.e., atomic number 92). All transuranic elements are produced artificially.

[2] DOE issued a second Record of Decision (64 FR 8068, February 18, 1999) for the remaining seven categories of residues.

sending the sand, slag and crucible residues to WIPP have been completed:

A. In July 1999, DOE completed sampling and analysis of the sand, slag and crucible residues to a greater than 95 percent confidence level and has concluded that there would be no pyrophoric hazards with this material. The analysis also showed that the sand, slag and crucible residues are sufficiently passivated (i.e. made less chemically reactive) to be shipped to WIPP.

B. DOE obtained Nuclear Regulatory Commission approval of Revision 11 of the TRUCON Codes in June 1999. This revision allows shipment to WIPP of residues with a passivated calcium constituent greater than that present in the sand, slag and crucible residues.

C. WIPP began disposal operations on March 26, 1999. In the process of preparing other transuranic wastes for shipment to WIPP, the Rocky Flats Site has developed a record keeping and management system that meets stringent WIPP certification requirements. This new record keeping and management system has passed several audits by both the DOE Carlsbad Area Office (the DOE organization that operates WIPP) and the U. S. Environmental Protection Agency. The system provides the technical information needed to certify transuranic wastes for disposal in WIPP. Rocky Flats has obtained WIPP certification for several waste streams and is currently shipping these waste streams to WIPP for disposal. This proven system could be used to obtain WIPP certification for the sand, slag and crucible residues. These residues are not hazardous waste, subject to Resource Conservation and Recovery Act regulations.

Completion of the activities discussed above resolves the three issues identified in the first Record of Decision as requiring resolution before disposal of the sand, slag and crucible residues at WIPP would be possible. Their resolution prompted DOE to reconsider its decision.

IV. Need to Change the Initial Decision

Shipment of the sand, slag and crucible residues to the Savannah River Site for processing would result in separation of approximately 130 kg of nuclear weapons usable plutonium from the other constituents of the sand, slag and crucible residues. While plutonium can be safely stored at the Savannah River Site, DOE prefers not to separate weapons usable plutonium unless such separation is required by health and safety concerns. With the resolution of the issues that led to DOE's original decision not to dispose of the sand, slag and crucible residues at WIPP, and the delay in shipping material to Savannah River Site, there is no longer any advantage in shipping the sand, slag and crucible residues to the Savannah River Site for processing.

In addition, if the plutonium were separated from the sand, slag and crucible residues at the Savannah River Site, the separated plutonium would then have to be stored at the Savannah River Site for several years before it would be further dispositioned, e.g., by immobilization. If the plutonium were to be immobilized, it would likely be several additional years before the immobilized plutonium could be shipped to a geologic repository for disposal. Direct disposal at WIPP would require further repackaging at Rocky Flats, and shipment to WIPP for disposal would occur somewhat later than shipments to the Savannah River Site. Nevertheless, DOE has confirmed that this delay would not adversely affect DOE's plan to close Rocky Flats by 2006.

V. Environmental Impacts Analysis

As indicated in the Records of Decision issued under the Final EIS, because of the small risks that potentially could result from implementation of any of the action alternatives and the absence of any clear basis for discerning an environmental preference, no one action alternative is clearly environmentally preferable over any other action alternative. On the other hand, because the residues would be left in storage at Rocky Flats with no defined disposal path under the No Action Alternative, all of the action alternatives are environmentally preferable to the No Action Alternative. Since the estimates of the impacts that could potentially occur under the various alternatives for management of the sand, slag and crucible residues have not changed since issuance of the Records of Decision, DOE believes that the conclusions it previously reached regarding the environmentally preferable alternative are still valid.

VI. Amended Decision

After review of the potential impacts considered in the EIS and the new information discussed above, DOE has decided to dispose of the sand, slag and crucible residues at WIPP (i.e., DOE will implement the repackaging option of Alternative 4). Termination of safeguards (as discussed in Section III.D. of the first Record of Decision) will be accomplished through the continued use of an approved variance to the safeguards requirements, as is already being done for several other categories of Rocky Flats plutonium residues.

Basis for the Decision

As discussed above, disposal at WIPP of the sand, slag and crucible residues will avoid separation of up to 130 kg of plutonium and result in permanent disposal of the plutonium several years sooner than it could be disposed of under the Savannah River Site plutonium separation alternative. DOE estimates that packaging the material for direct disposal is a more cost effective approach than processing at the Savannah River Site. Additionally, this would allow other materials from Rocky Flats, which would have been processed after the sand, slag and crucible residues, to be processed earlier in the F Canyon and F–B line facilities.

VII. Conclusion

The decision specified in this Amended Record of Decision is effective upon being made public, in accordance with DOE's NEPA implementation regulations (10 CFR 1021.315). The goals of this decision remain as stated in the first Record of Decision, namely to prepare the sand, slag and crucible residues for disposal in a manner that addresses health and safety concerns associated with storage of the sand, slag and crucible residues and to support closure of the Rocky Flats Site.

Issued in Washington, DC this 25th day of August, 1999.

Carolyn L. Huntoon,

Assistant Secretary for Environmental Management.

[FR Doc. 99–22671 Filed 8–31–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments

August 26, 1999.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection.

a. *Type of Application:* Non-project Use of Project Lands (Development of a New Marina).

b. *Project No.:* 2105–079.

c. *Date Filed:* August 9, 1999.

d. *Applicant:* Pacific Gas & Electric Company (PG & E).

e. *Name of Project:* Upper North Fork Feather River Project (Lake Almanor).

f. *Location:* The proposed recreation facilities would be located in Big Cove

on the northern shore of Lake Almanor in Plumas County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant contact:* Bill Zemke, Pacific Gas & Electric Company, Mail Code N11C, P.O. Box 770000, San Francisco, CA 94177, (415) 973–1646.

i. *FERC contact:* Any questions on this notice should be addressed to J.K. Hannula, E-mail address *john.hannula@ferc.fed.us,* or telephone (202) 219–0116.

j. *Description of the Application:* PG & E requests approval to permit the construction of a marina containing 18 to 20 slips. The marina will be operated by an RV campground and will be used exclusively by its own residents. The proposed marina would be located across from Big Cove Resort's marina. All RV sites will be located outside the project boundary.

k. *Deadline for filing comments:* 20 days from issuance date of this notice.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The Application may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item ''h'' above.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official serve list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on the resource agency.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

David P. Boergers,

Secretary.

[FR Doc. 99–22735 Filed 8–31–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6431–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Clean Water Act Section 404 State-Assumed Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Clean Water Act Section 404 State-Assumed Programs; OMB No. 2040–0168; EPA ICR No. 0220.08; expiration date 10/31/99. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0220.08.

SUPPLEMENTARY INFORMATION:

Title: Clean Water Act Section 404 State-Assumed Programs (OMB Control No. 2040–0168; EPA ICR No. 0220.08) expiring 10/31/99. This is a request for extension of a currently approved collection.

Abstract: The Clean Water Act authorizes states [and tribes] to assume the Section 404 permit program. States/tribes must demonstrate that they meet the statutory and regulatory requirements (40 CFR Part 233) for an approvable program. When EPA has a complete assumption request, the statutory time clock for EPA's decision starts. This information is made available to the other involved federal agencies (Corps of Engineers, Fish and Wildlife Service and National Marine Fisheries Service) and to the general public for review and comment.

EPA's assumption regulations establish recommended elements that should be included in a state/tribe's permit application, to ensure a thorough analysis of anticipated impacts and to comply with the 404(b)(1) Guidelines. These minimum information requirements are based on the information that must be submitted when applying for a federal Section 404 permit.

EPA is responsible for oversight of assumed programs to ensure that state/tribal programs are in compliance with applicable requirements and that state/tribal permit decisions adequately consider and minimize anticipated impacts. States/tribes must evaluate their programs annually and submit an annual report to EPA assessing their program. EPA's assumption regulations establish minimum requirements for the annual report.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on April 27, 1999 (64 FR 22607); no comments were received.

Burden Statement: This collection of information is separated into three pieces. The annual public reporting and record keeping burden for this collection of information is estimated to average 520 hours to request program assumption, 5 hours to complete a permit application and 80 hours to prepare the annual report. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States, Tribes, permit applicants.

Estimated Number of Respondents: 20,005.

Frequency of Response: One time; annually.

Estimated Total Annual Hour Burden: 100,667 hours.

Estimated Total Annualized Cost Burden (non-labor): $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondents burden, including through the use of automated collection techniques to the following addresses. Please refer to the EPA ICR No. 0220.08 and OMB Control No. 2040–0168 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503

Dated: August 26, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–22742 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6431–7]

Effluent Guidelines Task Force Open Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The Effluent Guidelines Task Force, an EPA advisory committee, will hold a meeting to discuss the Agency's Effluent Guidelines Program. The meeting is open to the public.

DATES: The meeting will be held on Tuesday, September 21, 1999 from 9:00 a.m. to 5:00 p.m., and Wednesday, September 22, 1999 from 8:30 a.m. to 3:00 p.m.

ADDRESSES: The meeting will take place at the Holiday Inn Eisenhower Metro Center, 2460 Eisenhower Avenue, Alexandria, Virginia (Potomac/Mt. Vernon II Rooms).

FOR FURTHER INFORMATION CONTACT: Beverly Randolph, Office of Water (4303), 401 M Street, SW, Washington, D.C. 20460; telephone (202) 260–5373; fax (202) 260–7185.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the Environmental Protection Agency gives notice of a meeting of the Effluent Guidelines Task Force (EGTF). The EGTF is a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), the external policy advisory board to the Administrator of EPA.

The EGTF was established in July of 1992 to advise EPA on the Effluent Guidelines Program, which develops regulations for dischargers of industrial wastewater pursuant to Title III of the Clean Water Act (33 U.S.C. 1251 *et seq.*). The Task Force consists of members appointed by EPA from industry, citizen groups, state and local government, the academic and scientific communities, and EPA regional offices. The Task Force was created to offer advice to the Administrator on the long-term strategy for the effluent guidelines program, and particularly to provide recommendations on a process for expediting the promulgation of effluent guidelines. The Task Force generally does not discuss specific effluent guideline regulations currently under development.

The meeting is open to the public, and limited seating for the public is available on a first-come, first-served basis. The public may submit written comments to the Task Force regarding improvements to the Effluent Guidelines Program. Comments should be sent to Beverly Randolph at the above address. Comments submitted by September 10, 1999 will be considered by the Task Force at or subsequent to the meeting.

Dated: August 26, 1999.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 99–22744 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34195; FRL–6099–9]

Organophosphate Pesticides: Ethoprop, Fenamiphos, Phorate, and Terbufos; Availability of Revised Risk Assessments and Public Participation on Risk Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the revised risk assessments and related documents for four organophosphate pesticides: Ethoprop, fenamiphos, phorate, and terbufos. In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management ideas or proposals. These actions are in response to a joint initiative between EPA and the Department of Agriculture (USDA) to increase transparency in the tolerance reassessment process for organophosphate pesticides.

DATES: Comments, identified by docket control numbers OPP–34144C for ethoprop, OPP–34134B for fenamiphos, OPP–34137B for phorate, and OPP–34139C for terbufos must be received by EPA on or before November 1, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, it is imperative that you identify docket control numbers OPP–34144C for ethoprop, OPP–34134B for fenamiphos, OPP–34137B for phorate, and OPP–34139C for terbufos in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on ethoprop, fenamiphos, phorate, and terbufos, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. Electronically

You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/.

B. In Person

The Agency has established official records for these actions under docket control numbers OPP–34144C for ethoprop, OPP–34134B for fenamiphos, OPP–34137B for phorate, and OPP–34139C for terbufos. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch (PIRIB) telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, you must identify docket control numbers OPP–34144C for ethoprop, OPP–34134B for fenamiphos, OPP–34137B for phorate, and OPP–34139C for terbufos in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Document Control Office (DCO) is open 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: ''opp-docket@epa.gov,'' or you may mail or deliver your standard computer disk using the addresses in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by the docket control numbers OPP–34144C for ethoprop, OPP–34134B for fenamiphos, OPP–34137B for phorate, and OPP–34139C for terbufos. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

IV. What Action is EPA Taking in this Notice?

EPA is making available for public viewing the revised risk assessments and related documents for four organophosphate pesticides, ethoprop, fenamiphos, phorate, and terbufos. These documents have been developed as part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to ethoprop, fenamiphos, phorate, and terbufos preliminary risk assessments, which where released to the public August 12, 1998 (63 FR 43175) (FRL–6024–3) (fenamiphos, phorate, and terbufos) and September12, 1998 (63 FR 48213) (FRL–6030–2) (ethoprop) through notices in the **Federal Register**.

In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management proposals or otherwise comment on risk management for ethoprop, fenamiphos, phorate, and terbufos. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management proposals or ideas to the Agency on the chemicals specified in this notice. Such comments and proposals could address ideas about how to manage dietary, occupational, or ecological risks on specific ethoprop, fenamiphos, phorate, and terbufos use sites or crops across the United States or in a particular geographic region of the country. To address dietary risk, for example, commentors may choose to

discuss the feasibility of lower application rates, increasing the time interval between application and harvest (''pre-harvest intervals''), modifications in use, or suggest alternative measures to reduce residues contributing to dietary exposure. For occupational risks, commentors may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. For ecological risks, commentors may suggest ways to reduce environmental exposure, e.g., exposure to birds, fish, mammals, and other non-target organisms. EPA will provide other opportunities for public participation and comment on issues associated with the organophosphate tolerance reassessment program. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commentor's opportunity to participate fully in later notice and comment processes. All comments and proposals must be received by EPA on or before November 1, 1999, using the instructions in Unit III. of this document. Comments and proposals will become part of the Agency record for the organophosphate specified in this notice.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: August 24, 1999.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–22456 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66270; FRL 6098–9]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on March 9, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm., 224, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail: hollins.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–66270. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel some 34 pesticide product registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1:

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000004–00084	Bonide Borer - Miner Killer 20%	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
000004–00220	Bonide Borer Miner Killer-5	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer
000100 AR–88–0006	Triumph 4e Insecticide	*O,O*-Diethyl phosphorothioate *O*-(5-chloro-1-(1-methylethyl)-1*H*-1,2,4-triazol-3-yl)
000100 FL–88–0021	Triumph 4E Insecticide	*O,O*-Diethyl phosphorothioate *O*-(5-chloro-1-(1-methylethyl)-1*H*-1,2,4-triazol-3-yl)

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
000100 IA–88–0004	Triumph 4E Insecticide	*O,O*-Diethyl phosphorothioate *O*-(5-chloro-1-(1-methylethyl)-1*H*-1,2,4-triazol-3-yl)
000100 LA–88–0013	Triumph 4E Insecticide	*O,O*-Diethyl phosphorothioate *O*-(5-chloro-1-(1-methylethyl)-1*H*-1,2,4-triazol-3-yl)
000100 MO–89–0003	Triumph 4E Insecticide	*O,O*-Diethyl phosphorothioate *O*-(5-chloro-1-(1-methylethyl)-1*H*-1,2,4-triazol-3-yl)
000100 MS–88–0007	Triumph 4E Insecticide	*O,O*-Dimethyl phosphorothioate *O*-(1-isopropyl-5-chloro-1,2,4-triazol-3-yl)
000100 NC–89–0002	Triumph 4E Insecticide	*O,O*-Diethyl phosphorothioate *O*-(5-chloro-1-(1-methylethyl)-1*H*-1,2,4-triazol-3-yl)
000100 SC–88–0005	Triumph 4E Insecticide	*O,O*-Dimethyl phosphorothioate *O*-(1-isopropyl-5-chloro-1,2,4-triazol-3-yl)
000100 TN–93–0010	Triumph 4E Insecticide	*O,O*-Diethyl phosphorothioate *O*-(5-chloro-1-(1-methylethyl)-1*H*-1,2,4-triazol-3-yl)
000100 TX–83–0011	Dual 8E Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylphenyl)acetamide (9CI)
000100 TX–98–0002	Dual 8E Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylphenyl)acetamide (9CI)
000100 TX–98–0003	Dual Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylphenyl)acetamide (9CI)
000270–00266	Farnam Dog Dip	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
000400 TX–82–0011	Ded-Weed Sulv-Amine	Dimethylamine 2,4-dichlorophenoxyacetate
000769–00159	20% Lindane Emulsifiable Concentrate	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
000769–00869	Pratt 5% Landane Borer Spray	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
000769–00949	Pratt Borer Spray	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
000769–00960	Pratt Lindane 25% W.P.	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
000769–00973	Lindane 2E	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
001258–01184	Omacide P–10 D Industrial Fungicide	Zinc 2-pyridinethiol-1-oxide
002781–00017	Paracide II	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
002781–00019	Kennel Dip II	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
002781–00034	Happy Jack Streaker Insecticide for Dogs	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
002935–00514	Bonide Garden & Ornamental Fungicide 75% WP	Tetrachloroisophthalonitrile
003487–00018	Eagles-7 Mange Treatment	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer) Rotenone
003876–00156	Dearcide 702	5-Chloro-2-methyl-3(2*H*)-isothiazolone 2-Methyl-3(2*H*)-isothiazolone
004816–00409	Fairfield Residual B	o-Isopropoxyphenyl methylcarbamate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
008591–00034	AG–480	5-Chloro-2-methyl-3(2*H*)-isothiazolone
		2-Methyl-3(2*H*)-isothiazolone
009404–00075	Liquid Lawn Edger	6,7-Dihydrodipyrido(1,2-a:2',1'-c)pyrazinediium dibromide
010163 IL–97–0002	Imidan 70–WSB & 70–WP	*N*-(Mercaptomethyl)phthalimide S-(*O,O*-dimethyl phosphorodithioate)
010182 VA–93–0006	Gramoxone Extra Herbicide	1,1'-Dimethyl-4,4'-bipyridinium dichloride
045017–00044	Paper-Tek 6202	5-Chloro-2-methyl-3(2*H*)-isothiazolone
		2-Methyl-3(2*H*)-isothiazolone

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number:

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000004	Bonide Products Inc., 2 Wurz Ave., Yorkville, NY 13495.
000100	Novartis Crop Protection, Inc., Box 18300, Greensboro, NC 27419.
000270	Farnam Companies Inc., 301 W. Osborn Rd., Phoenix, AZ 85013.
000400	Uniroyal Chemical Co., Inc., 74 Amity Rd., Bethany, CT 06524.
000769	Sureco Inc., An Indirect Subsidiary of Verdant Brands, 9555 James Ave., South, Suite 200, Bloomington, MN 55431.
001258	Arch Chemicals, Inc., 501 Merritt 7, Norwalk, CT 06856.
002781	Happy Jack Inc., Box 475, Snow Hill, NC 28580.
002935	Wilbur Ellis Co., 191 W. Shaw Ave, #107, Fresno, CA 93704.
003487	Bacon Products Co., Inc., Box 22187, Chattanooga, TN 37422.
003876	Betzdearborn Inc., (Attn: Kevin Manning), Water Management Group, 4636 Somerton Rd., Trevose, PA 19053.
004816	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
008591	Nalco Diversified Technologies, Inc., Box 200, Chagrin Falls, OH 44022.
009404	Sunniland Corp., Box 8001, Sanford, FL 32772.
010163	Gowan Co., Box 5569, Yuma, AZ 85366.
010182	Zeneca Ag Products, Box 15458, Wilmington, DE 19850.
045017	Betzdearborn Inc., (Attn: Kevin Manning), Paper Process Group, Inc., 4636 Somerton Rd., Trevose, PA 19053.

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be cancelled. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked March 9, 2000. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** of June 26, 1991; (56 FR 29362) [FRL 3846–4]. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: August 18, 1999.

Richard D. Schmitt,

Acting Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 99–22329 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–889; FRL–6098–6]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–889, must be received on or before October 1, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–889 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Vera Soltero, Minor Use, Inerts and Emergency Response Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–9359; and e-mail address: Soltero.vera@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer.

Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–889. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–889 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by E-mail to: ''*opp-docket@epa.gov*,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by docket control number PF–889. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 20, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represent the views of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Agricultural Research Service (ARS), U.S. Dept. of Agriculture

PP 9E6047

EPA has received a pesticide petition (PP 9E6047) from Agricultural Research Service (ARS), U.S. Dept. of Agriculture, Beltsville Agricultural Reseach Center, Beltsville, MD 20705, proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for cucurbitacins in the powders and juices of the wild and domestic members of the plant family Cucurbitaceae. These powders and juices are the source materials for cucurbitacins added as inert ingredients in field prepared tank mixes of pesticides. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

As defined in 40 CFR 153.125, inert ingredients include, but are not limited to the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents, surfactants, thickners, wetting, spreading, and dispersing agents, carriers, or emulsifiers. The proposed change in source materials requires an amendment to the existing tolerance exemption (40 CFR 180.1001(d)) for buffalo gourd root powder, zucchini juice and cucurbitacins. ARS proposes the following amendment which changes only the inert ingredient, not the limits or the uses:

Inert Ingredients	Limits	Uses
Cucurbitacins as components of powders or juices of wild or domestic species of the plant family Cucurbitaceae.	No more than 2.5 pounds (lbs)/acre/season (3.4 grams (gm)/acre/season of cucurbitacin).	Gustatory stimulant

Cucurbitacins are ubiquitous in wild and domestic members of the plant family Cucurbitaceae, e.g., cucumbers, squash, melons, and gourds. Many species in this family have been used as food by humans for centuries and some have been valued for their medicinal properties. The cucurbitacins occur in mixtures and are found in many tissues of the plant including fruits and seeds. They act specifically on Diabriticine beetles (corn rootworms and cucumber beetles) as movement arresters and compulsive feeding stimulants. Cucurbitacins from the buffalo gourd and zucchini squash are currently used in pesticide products.

Cucurbitacins are oxygenated tetracyclic terpenes. At least 19 cucurbitacins, A-S, have been described from the family Cucurbitaceae. Two or more alcoholic hydroxyl groups characterize the bitter principles and cucurbitacins A-C and E also contain one acetoxy group. Keto groups are characteristic of these cucurbitacins. Cucurbitacins B, D, E, C, and I-L contain a diospenol grouping that can combine with glucose to form naturally occurring enolglycocides. The cucurbitacins occur in nature in mixtures. Cucurbitacin B [25-(acetyloxy)-2,16,20-trihydroxy-9-methyl-19-norlanosta- 5,23-diene-3,11,22-trione;1,2-dihydro-α-elaterin] and E [25-(acetyloxy-2,16,20-trihydroxy-9-methyl- 19-nor-9β, 10α-lanosta-1,5,23-triene-3,11,22,trione; α-elaterin] are the most effective feeding stimulants. Measurements from 11 species of Cucurbita fruit showed a total level of cucurbitacins ranging from 3.20 miligrams/kilograms (mg/kg) to 0.02 mg/kg.

When combined with an approved pesticide and applied according to good agricultural practices, they provide pest control with a significant reduction of the amount of toxic pesticide required. Based upon the data provided and passed experience, ARS believes that the limitations on application rate provide adequate safety and a tolerance is not necessary to protect the public health.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA as amended, ARS has submitted the following summary of information, data, and arguments in support of their pesticide petition.

A. Residue Chemistry

Magnitude of residues. Based upon the limited amount of cucurbitacin (3.4 gm/acre/season) that can be applied, the rate of deterioration of the chemicals, and early season time of application, no residue is expected on the crop at harvest time. A number of methods including high performance liquid chromatography, mass spectrometry, thin layer chromatography or insect feeding response, are available for the detection of residues.

B. Toxicological Profile

1. *Acute toxicity*. Studies have shown that the acute oral toxicity (LD_{50}) in mice of the various cucurbitacins ranges from 5 to 650 mg/kg body weight. Cucurbitacin I is the most toxic. The LD_{50} of cucurbitacin E-glycoside, one of the more effective insect feeding stimulants, is 40 mg/kg body weight.

2. *Chronic toxicity*. Because of the low levels of cucurbitacins required and their rapid degradation in the field, no chronic effects are expected. Neither cucurbitacins nor their metabolites are known or expected to have any effect on the immune or the endocrine systems. Cucurbitacins are not known to be carcinogenic, in fact, some have been shown to inhibit the growth of solid tumors *in vivo*.

C. Aggregate Exposure

1. *Dietary exposure*. Species of the Family Cucurbitaceae ''cucurbits'' have been commonly used as fruits and vegetables throughout the world for centuries. They are valuable sources of vitamins and minerals. Seeds of several species are used as sources of flavorings in bakery goods or for oils and proteins. All of these species contain some assortment of cucurbitacins in varying concentrations. At the allowable rate of application the use of these compounds as inert ingredients to control pests will add little to the aggregate exposure. The use to control corn rootworm is given as an example. Assuming that the maximum permitted level of 3.4 gm/acre/season is applied, with no loss either in the field or during processing, and that all the material is concentrated in the grain, the following exposure would result. The average yield of corn in the United States is 120–130 bushels per acre. At 56 pounds per bushel the minimum yield is 6,720 pounds per acre

and the level of cucurbitacin would be 0.88951 gram per pound. A gram of ''straightneck'' squash contains 0.00139 gram cucurbitacin per gram of squash. Thus, consumption of a pound of treated corn would add less cucurbitacin to the diet than a gram serving of squash. To have consumed the sufficient amount of the most toxic cucurbitacin, LD_{50}=5 mg/kg body weight, a 50 kg human would have to eat over 400 pounds of the treated corn.

i. *Drinking water*. Most cucurbitacins are insoluble in water and transfer of these cucurbitacins to ground water is unlikely. The glycosylated forms which are more water soluble are less toxic to humans. No uses are registered for application to bodies of water and none are anticipated.

2. *Non-dietary exposure*. Registered uses are limited to agricultural crops.

D. Cumulative Effects

Exposure through other pesticides and substances with the common mode of toxicity as this compound. No information indicates that toxic effects would be cumulative with any other compounds. Further, no other pesticides or substances are registered with this mode of action.

E. Safety Determination

1. *U.S. population*. The fact that cucurbitacins are ubiquitous in many plants regularly consumed by the general public, the maximum projected additional exposure to these compounds is significantly less than that from a normal serving of these plants, and the previously granted temporary exemption for buffalo gourd root powder as a specific source of cucurbitacins (55 FR 49700, November 30, 1990), and a permanent exemption from the requirement of a tolerance (57 FR 40128, September 2, 1992), later amended to include zucchini juice (63 FR 43085, August 12, 1998), (FRL–6017–5) support an amendment to the existing tolerance exemption.

2. *Infants and children*. The use sites of the cucurbitacins are all agricultural for the control of Diabrotine beetles. Therefore, non-dietary exposure to infants and children is not expected. The limited application rate and correspondingly low maximum residue requiring that a 1 kg child would have to consume almost 10 pounds of corn in a single meal to obtain a LD_{50} dose and that the aggregate exposure and cumulative exposure pose little, if any, risk all; all provide reasonable certainty that no harm will result to infants and children from exposure to residue of the cucurbitacins.

F. International Tolerances

There are no international tolerances or tolerance exemptions for cucurbitacins. However, prior EPA findings of significant relevance to this petition include a temporary exemption from the requirements of a tolerance for residues of the buffalo gourd (*Cucurbita foetidissima*) root powder as source of cucurbitacins in or on the raw agricultural commodity field corn for the control of adult corn rootworms (55 FR 49700, November 30, 1990).

In addition, the Agency established a permanent exemption from the requirement of a tolerance for residues of buffalo gourd root powder when used as an inert ingredient (gustatory stimulant) in pesticide formulations applied to growing crops only (57 FR 40128, September 2, 1992).

In 1998 EPA amended the permanent exemption from the requirement of a tolerance to add the residues of zucchini juice (*Cucurbita pepo*) to the list of ''inert ingredients'' (63 FR 43085, August 12, 1998).

[FR Doc. 99–22328 Filed 8–31–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–881; FRL–6090–8]

Ecolab Inc.; Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–881, must be received on or before October 1, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–881 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Amelia M. Acierto, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8375; and e-mail address: acierto.amelia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–881. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to

this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–881 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by E-mail to: ''*opp-docket@epa.gov*,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by docket control number PF–881. Electronic comments may also be filed online at many Federal Depository Libraries.

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2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 23, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

1. PP 9E5081

Summary of Petitions

EPA has received a pesticide petition (PP 9E5081) from Ecolab Inc., 370 N. Wabasha Street, St. Paul, MN 55102 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for hydroxyethylidene-1,1-diphosphonic acid (HEDP) in or on the raw agricultural commodities, in processed commodities, and in or on meat and meat byproducts of cattle, sheep, hogs, goats, horses, and poultry, milk, and dairy products, eggs, seafood and shellfish, and fruit and fruits and vegetables when such residues result from the use of HEDP as a component of a food contact surface sanitizing solution up to 34 parts per million (ppm) for use in food handling establishments. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Analytical method*. Because Ecolab Inc. is petitioning for an exemption from the requirement of a tolerance, an enforcement method for HEDP is not needed.

2. *Magnitude of residues* . The residues which transfer from the sanitized dish or utensil to food are not of toxicological significance.

B. Toxicological Profile

1. *Acute toxicity*. This material has been reviewed by the EPA as an inert ingredient in antimicrobial pesticide

formulations used in or on raw agricultural commodities. The summary that follows is from the May 22, 1998 **Federal Register** Final Rule ((63 FR 28253), (FRL–5790–1)). The rat acute oral lethal dose $(LD)_{50}$ is 2,400 miligrams/kilograms (mg/kg).

2. *Genotoxicty*. HEDP was reported to be non-mutagenic in a Salmonella/ Mammalian microsome test or in a L5178Y TK mouse lymphoma cell point mutation assay, with and without mammalian microsomal activation.

3. *Reproductive and developmental toxicity*. In a combined 2–generation reproduction/developmental toxicity study, rats (22 rats/sex/dose) were administered HEDP at doses of 0, 0.1, and 0.5% in the diet. The no obseverable adverse effect level (NOAEL) for developmental and reproductive findings was 50 mg/kg/day (0.1% in the diet) and the lowest observable adverse effect level (LOAEL) was 250 mg/kg/day (0.5% in the diet) based on reduced litter size in the first litter (F1a) and an increase in stillborn pups in the second litter (F1b). These effects occurred in the absence of maternal toxicity and were seen in both reproductive litters of the first generation. In a developmental toxicity study, rabbits were administered HEDP at doses of 0, 25, 50 and 100 mg/kg/day, either incorporated into feed or by gavage with water. The NOAEL for both systemic and developmental effects was 50 mg/kg/day and the LOAEL was 100 mg/kg/day by gavage based on decreased maternal weight gain/ food consumption and decreased fetal body weights.

4. *Subchronic toxicity*. —i. *Dogs*. In a subchronic feeding study in beagle dogs (4 dogs/sex/dose), HEDP was administered via the diet at 0, 1,881, 3,881, or 10,881 ppm for 90 days. The NOAEL was 10,881 ppm (250 mg/kg/ day).

ii. *Rats*. In a subchronic feeding study in rats, Sprague-Dawley strain rats were fed HEDP at dietary concentrations of 0, 3,881, 10,881 and 30,881 ppm for 90 days. The NOAEL was 10,881 ppm (approximately 500 mg/kg/day) and the LOAEL was 30,881 ppm (approximately 1,500 mg/kg/day) based on decreased body weight decreased food consumption, slight anemia, and decreased heart, liver, and kidney weights.

5. *Chronic toxicity*. Chronic exposure to HEDP is not expected to demonstrate any additional toxicity beyond what was noted in subchronic toxicity tests. Since this compound is not considered to be genotoxic and is not structurally similar to known carcinogens, it is not likely to be carcinogenic.

6. *Endocrine disruption*. To the best of our knowledge, nothing in the literature suggests HEDP is an endocrine disruptor. HEDP does not act like hormones or inhibit hormonal activity.

C. Aggregate Exposure

1. *Dietary exposure*. Acute: There are no acute toxicological concerns for HEDP, therefore, an acute dietary risk assessment is not required.

i. *Food*. Chronic: Indirect using the worst case scenario of HEDP in a sanitizing solution at the maximum proposed level of 34 ppm, in a restaurant where all food consumed by an individual in a single day has contacted sanitized dishes and food preparation surfaces, and there is 100% transference of the sanitizer from the surface to the food, the exposure would be 0.002 mg/kg/day for a 70 kg person (adult) and 0.0025 mg/kg/day for a 28 kg person (child). Chronic: Direct Antimicrobial fruit and vegetable wash exposure calculated to be 0.88104 mg/ kg/day for a 70 kg person and 0.8811 mg/kg/day for a 28 kg person (see **Federal Register** May 22, 1998 (63 FR 28253)).

ii. *Drinking water*. Acute: Since there are no acute toxicological concerns for HEDP, an acute drinking water risk assessment should not be required. Chronic: Not expected to exceed 0.8817 mg/kg/day for adults and 0.0025 mg/kg/ day for children (see **Federal Register** May 22, 1998 (63 FR 28253)).

2. *Non-dietary exposure*. Acute: Since there are no acute toxicological concerns for HEDP, an acute non-dietary risk assessment should not be required. Chronic: Not expected to exceed 0.0049 mg/kg/day for adults and 0.0204 mg/kg/ day for children (see **Federal Register** May 22, 1998 (63 FR 28253)).

D. Cumulative Effects

Chronic drinking water: Not to exceed 0.8817 mg/kg/day adults and 0.0025 mg/kg/day children (see **Federal Register** May 22, 1998 (63 FR 28253)). Chronic dietary: Previous clearance as a component of an antimicrobial formulation for use on fruit and vegetables resulted in an overestimation of 0.88104 mg/kg/day for adults and 0.8811 mg/kg/day for children (see **Federal Register** May 22, 1998 (63 FR 28253)). The proposed use as a component of a food contact surface sanitizer is not to exceed 0.002 mg/kg/ day for adults and 0.0025 mg/kg/day for children. Non-dietary exposure: Not to exceed 0.0049 mg/kg/day for adults and 0.0204 mg/kg/day children.

E. Safety Determination

1. *U.S. population*. Using the extremely conservative exposure assumptions described above, the aggregate exposure to HEDP from all uses, including the proposed use will not exceed 0.0076 mg/kg/day for adults and 0.0255 mg/kg/day for children.

2. *Infants and children*. Nothing in the available literature indicates that infants or children are more sensitive to the effects of this compound. Exposure of this inert ingredient (from the use proposed in this petition) should not pose a health risk to the U.S. population subgroup of infants and children.

F. International Tolerances

No Codex maximum residue levels have been established for HEDP.

2. PP 9E5086

Summary of Petition

EPA has received a pesticide petition (PP 9E5086) from Ecolab Inc., 370 N. Wabasha Street, St. Paul, MM 55102 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for acetic acid in or on the raw agricultural commodities, in processed commodities, and in or on meat and meat byproducts of cattle, sheep, hogs, goats, horses, and poultry, milk, and dairy products, eggs, seafood and shellfish, and fruit and fruits and vegetables when such residues result from the use of acetic acid as a component of a food contact surface sanitizing solution for use in food handling establishments. The request is for an unlimited clearance. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Analytical method*. Because Ecolab Inc. is petitioning for an exemption from the requirement of a tolerance, an enforcement method for acetic acid is not needed.

2. *Magnitude of residues*. The residues which transfer from the sanitized dish or utensil to food are not of toxicological significance.

B. Toxicological Profile

1. *Acute toxicity*. Acetic acid is a direct food additive. It is considered

generally recognized as safe by the Food and Drug Administration and is a normal constituent in the human diet. Acetic acid is allowed under 40 CFR 180.1001(c) as an inert ingredient in pesticide formulation applied to growing crops or to raw agricultural commodities after harvest without limit in the formula. Acute oral lethel dose (LD_{50}) (rat): 3310 3530 milligrams/kilograms (mg/kg); Acute oral LD_{50} (mouse): 4960 mg/kg; Inhalation LC_{50} (mouse): 5620 parts per million (ppm)/l hour(s); Dermal LD_{50} (rabbit): 1060 mg/kg.

2. *Genotoxicty*. Nothing in the available literature indicates that acetic acid is a genotoxic or mutagenic compound. It is generally recognized as safe and is a normal constituent in the human diet.

3. *Reproductive and developmental toxicity*. Nothing in the available literature indicates that acetic acid is a developmental or reproductive toxin. It is generally recognized as safe and is a normal constituent in the human diet.

4. *Subchronic toxicity*. Nothing in the available literature indicates long term exposure to acetic acid produces any adverse toxicological effects unless it is ingested at a concentration where it produces corrosive or other effects on the gastric mucosa. There are no studies indicating that prolonged exposure to acetic acid produces cumulative toxicity since acetic acid is a normal constituent of cellular metabolism. Acetic acid is a catabolic breakdown product of fatty endogenous acid metabolism and is also used in the synthesis of lipids. Estimated daily intakes of acetic acid/acetate ion are in the range of 2 grams per day for an adult. As a normal constituent of the human diet, there are no toxicological concerns with acetic acid.

5. *Chronic toxicity*. Chronic exposure would not produce any additional effect beyond what is noted in subchronic exposure, therefore, no additional concerns are warranted. Nothing in the literature indicates that acetic acid may be carcinogenic.

6. *Animal metabolism*. Acetic acid and its derivatives are used in the metabolism fatty acids. It is a normal constituent of mammalian metabolism, therefore, a discussion of acetic acid metabolites is not relevant.

7. *Metabolite toxicology*. ''Metabolites'' of acetic acid are used in several processes of cellular metabolism. These metabolites are normal constituents of the cell, therefore a discussion of metabolite toxicity of acetic acid is not relevant.

8. *Endocrine disruption*. Acetic acid does not act like hormones or inhibit hormonal activity. It is not strucurally related to any known endocrine disruptor. Nothing in the literature suggests that it is an endocrine disruptor or possesses intrinsic hormonal activity.

C. Aggregate Exposure

1. *Dietary exposure*. Acute: There are no acute toxicological concerns for acetic acid, an acute dietary risk assessment is not required. Chronic Indirect: Using a worst-case scenario, the additional exposure from food contact surface sanitizers would be 0.03 mg/kg/day for a 70 kg person (adult) and 0.04 mg/kg/day for a 28 kg person (child).

i. *Food*. Chronic Direct: A typical adult ingests approximately 2 grams (2000 mg) of acetic acid/acetate per day via the diet. The incremental increase in exposure as a result of the use in food contact surface sanitizing solutions is negligible.

ii. *Drinking water*. Acute: Since there are no acute toxicological concerns for acetic acid, an acute drinking water risk assessment should not be required. Chronic: There is no concern about the potential for transfer of acetic acid residues to human drinking water. It is essentially impossible that residues from the proposed use will transfer acetic acid residues to any sources of human drinking water.

2. *Non-dietary exposure*. The potential for significant additional non-occupational exposure under the use proposed to the general population (including children) is unlikely.

D. Cumulative Effects

Well over 99% of the exposure to acetic acid will be via the diet. Most of this exposure will be through ingestion of ''vinegar'' in the diet. Small amounts of acetic acid exposure will be the result of non-food uses. The amount of acetic acid exposure resulting from indirect exposure to sanitizing solutions will be virtually zero. Since acetic acid in the diet poses no toxicological risk, the cumulative toxicity resulting from this additional exposure is negligible.

E. Safety Determination

1. *U.S. population*. Since there are not adverse toxicological effects resulting from normal dietary concentrations of acetic acid, there is no need to determine aggregate risks, or to conduct a safety determination. Acetic acid is generally recognized as safe and the incremental exposure due to its us as an inert in a food contact surface sanitizer is negligible.

2. *Infants and children*. As in adults, infants and children use acetic acid as a basic constituent of cellular metabolism. Children are at no greater ''risk'' from exposure to acetic acid. Therefore, as with adults, a safety determination is not appropriate.

F. International Tolerances

No Codex maximum residue levels have been established for acetic acid.

3. PP 9E6014

Summary of Petition

EPA has received a pesticide petition (PP 9E6014) from Ecolab Inc., 370 N. Wabasha Street, St. Paul, MN 55120 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for residues of phosphoric acid in or on raw agricultural commodities, in processed commodities, and in or on meat and meat byproducts of cattle, sheep, hogs, goats, horses, and poultry, milk, and dairy products, eggs, seafood and shellfish, and fruit and fruits and vegetables when such residues result from the use of phosphoric acid as a component of a food contact surface sanitizing solution for use in food handling establishments. The request is for an unlimited clearance. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Analytical method*. Because Ecolab Inc. is petitioning for an exemption from the requirement of a tolerance, an enforcement method for phosphoric acid is not needed.

2. *Magnitude of residues*. The residues which transfer from the sanitized dish or utensil to food are not of toxicological significance.

B. Toxicological Profile

1. *Acute toxicity*. Phosphoric acid is a direct food additive. It is considered generally recognized as safe by the Food and Drug Administration and is a normal constituent in the human diet. Phosphoric acid is allowed under 40 CFR 180.1001(c) as an inert ingredient in pesticide formulation applied to growing crops or to raw agricultural commodities after harvest without limit in the formula. From the Reregistration Eligibility Decision (RED) document for Mineral Acids: Acute oral lethal dose

(LD_{50}): 1530 milligrams/kilograms (mg/kg); Dermal LD_{50}: 2740 mg/kg.

2. *Genotoxicty*. Nothing in the available literature indicates that phosphoric acid or phosphate ion are considered to be genotoxic or mutagenic.

3. *Reproductive and developmental toxicity*. Nothing in the available literature indicates that phosphoric acid or phosphate ion are developmental or reproductive toxins. They are generally recognized as safe and are normal constituents in the human diet.

4. *Subchronic toxicity*. Nothing in the available literature indicates long-term exposure of phosphoric acid/phosphate ion produces any adverse toxicological effects unless it is ingested at a concentration where it produces corrosive or other effects on the gastric mucosa. There are no studies that indicate that prolonged exposure to low concentrations of phosphoric acid/phosphate ion produce cumulative toxicity since they are normal constituents of cells.

5. *Chronic toxicity*. Chronic exposure would not produce any additional effect over what is noted in subchronic exposure, therefore, no additional concerns are warranted. Nothing in the literature indicates that phosphoric acid may be carcinogenic.

6. *Animal metabolism*. Phosphoric acid is a normal constituent of cells. It is used for many purposes including buffering of the blood, high energy bonds, DNA synthesis, etc. A discussion of the metabolism is not relevant.

7. *Metabolite toxicology*. Phosphoric acid and phosphate are not metabolized by the body, but rather serve as major components in cellular structure and processes. A discussion of metabolite toxicity is not relevant.

8. *Endocrine disruption*. A review of information from the Agency for Toxic Substances and Disease Registry indicates that potential endocrine effects from exposure to phosphoric acid or phosphate ion have not been studied. To the best of our knowledge, nothing in the available literature suggests that phosphoric acid acts as an endocrine disrupter or that it possesses intrinsic hormonal activity.

C. Aggregate Exposure

1. *Dietary exposure*. Acute: There are no acute toxicological concerns for phosphoric acid, therefore, an acute dietary risk assessment is not required. Chronic Indirect: Using a worst-case scenario, the exposure would be 0.0065 mg/kg/day for a 70 kg person (adult) and 0.008 mg/kg/day for a 28 kg person (child).

i. *Food*. Chronic Direct: A typical adult ingests approximately one to two grams of phosphoric acid/phosphate per day as phosphorus via the diet. Following ingestion, it is absorbed by the gastrointestinal tract. In the plasma and in intra and extracellular fluid, the pH is such that the phosphoric acid exists in its ionized form, phosphate. The approximate concentration of phosphate in the plasma is 4 mg/100 milliliters (mls). Phosphate serves many biological purposes including buffering the blood, serving as a constituent of cell membranes, providing high energy phosphate bonds for cellular energy demands, maintaining DNA structure and many other functions. Phosphate is also a major constituent of the skeletal system. It is excreted in the urine and needs to be replenished on an ongoing basis. The normal human diet contains significant quantities of phosphate. Phosphate is also derived from phosphoric acid as a consequence of its direct addition to food, as approved under 21 CFR 582.1073. When used as a food contact surface sanitizer, the residue that would be introduced into food will be insignificant compared to the normal dietary intake of phosphoric acid/phosphate ion. Based on this, there are no toxicological concerns resulting from exposures to residues of phosphoric acid resulting from the use of sanitizing solutions.

ii. *Drinking water*. Acute: Since there are no acute toxicological concerns for phosphoric acid, an acute drinking water risk assessment should not be required. Chronic: There are no toxicological concerns about the exposure of low concentrations of phosphate ion in the drinking water. Although it is possible that trace amounts of phosphates used as a sanitizer may ultimately get into drinking water, no adverse health effects would result. The amount of ''naturally occurring phosphate'' in water will greatly exceed the amount derived from sanitizing solutions.

2. *Non-dietary exposure*. The exposure phosphoric acid/phosphates in non-occupational settings is minimal. Phosphates may be present in some products including general purpose cleaners, soaps, etc. however, dermal absorption would be insignificant. Since phosphate is a relatively significant constituent of the diet, non-occupational exposure will be small by comparison.

D. Cumulative Effects

Over 99% of the exposure to phosphoric acid/phosphates is expected to be via the diet. Small amounts of phosphoric acid/phosphate exposure will be the result of non-food uses. The amount of phosphoric acid/phosphate exposure resulting from indirect exposure to sanitizing solutions will be virtually zero. Since phosphoric acid/phosphate in the diet poses no toxicological risk, the cumulative toxicity resulting from this additional exposure is negligible.

E. Safety Determination

1. *U.S. population*. Since there are not adverse toxicological effects resulting from normal dietary concentrations of phosphoric acid/phosphate ion, there is no need to determine aggregate risks, or to conduct a safety determination. Phosphoric acid is generally recognized as safe and the incremental exposure due to its us as an inert in a food contact surface sanitizer is negligible.

2. *Infants and children*. As in adults, infants and children use phosphoric acid as a basic constituent of cellular metabolism, energy production and cell structure. Children are at no greater ''risk'' from exposure to phosphoric acid. Therefore, as with adults, a safety determination is not appropriate.

F. International Tolerances

No Codex maximum residue levels have been established for phosphoric acid.

[FR Doc. 99–22747 Filed 8–31–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–885; FRL–6096–8]

Notice of Filing Pesticide Petitions to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number [PF–885], must be received on or before October 1, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** section. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–885 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja Brothers, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–3194; and e-mail address: brothers.shaja@epa.gov.

For technical questions, contact the appropriate Product Manager: Joseph Tavano, telephone number: (703) 305–6411 and e-mail address: tavano.joseph@epa.gov.; or Cynthia Giles-Parker (PM 22), telephone number: (703) 305–7740 and e-mail address: giles-parker.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. In person. The Agency has established an official record for this action under docket control number PF–885. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–885 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by E-mail to: ''*opp-docket@epa.gov* ,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by docket control number PF–885. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities

under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 19, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required bysection 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. IR-4 Project

PP 6E4603, 6E4787, and 7E4878

EPA has received pesticide petitions [PP 6E4603, 6E4787, and 7E4878] from the Interregional Research Project Number 4 (IR-4), New Jersey Agricultural Experiment Station, P. O. Box 231 Rutgers University, New Brunswick, NJ 08903 proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for combined residues of the herbicide, pendimethalin [N-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, and its 3, 5-dinitrobenzyl alcohol metabolite (CL 202347) in or on the food commodities as follows:

1 *PP 6E4603*. Proposes the establishment of a tolerance for carrots at 0.5 parts per million (ppm).

2 *PP 6E4787*. Proposes the establishment of a tolerance for citrus fruit crop group at 0.1 ppm.

3. *PP 7E4878*. Proposes the establishment of tolerances, with regional registration for peppermint and spearmint tops at 0.2 ppm, and peppermint and spearmint oil at 1.0 ppm. Registration will be limited to Idaho, Oregon, and Washington based on the geographical representation of the residue data submitted to EPA.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

1. *Plant metabolism*. The qualitative nature of the residues of pendimethalin in plants is understood based on adequate studies conducted with [^{14} C]-pendimethalin on various crops. Pendimethalin and its 3,5-dinitrobenzyl alcohol metabolite (CL202347) are the only residues of concern.

2. *Analytical method*. Section 408 (b)(3) of the amended FFDCA requires EPA to determine that there is a practical method for detecting and measuring levels of the pesticide chemical residue in or on food and that the tolerance be set at a level at or above limit of detection of the designated method. The Gas Chromatography (GC) of pendimethalin and (CL202347) analytical methods, M691 and M692, are proposed as the enforcement methods for the residues in carrots; M1999 is the proposed method for citrus fruit crop group, and processed citrus commodities; and M1930.01 has been proposed for mint and mint oil. All methods utilize electron capture detectors and have a limit of quantitation (LOQ) of 0.05 ppm for the respective residues of concern.

3. *Magnitude of residues*—i. Residue field trials were conducted in seven major carrot producing states in the United States at both the 1x rate of 2 pounds (lbs) active ingredient/acre (ai/A) and an exaggerated rate of 4 lbs ai/A (2x the typical application rate). Maximum pendimethalin residues recovered from carrot samples treated with these applications were 0.10 ppm from the 1x treatment and 0.16 ppm from the 2x treatment. For the alcohol metabolite, CL202347, the maximum recovered residues ranged from 0.29 ppm from the 1x treatment to 0.44 ppm from the 2x treatment. The registrant believes that the results from these studies support the proposed tolerance of 0.5 ppm pendimethalin in or on carrots.

ii. Residue field trials were conducted on oranges, grapefruits, and lemons in major citrus fruit crop group producing states in the United States at a 1.5x rate of 6 lbs ai/A and an exaggerated 3x rate of 12 lbs ai/A. The plots were treated with pendimethalin at a variety of different intervals prior to harvest. The raw agricultural commodity (RAC) samples were also processed into wet and dried pulp, molasses, oil and juice. RAC samples taken from plots treated one day prior to harvest, a worst case residue situation, resulted in residues of 0.008 ppm (in grapefruit) or less. No residues were recovered from wet pulp and juice samples at the 0.005 ppm level. Residues of pendimethalin were recovered at 0.005 ppm in dried pulp, 0.009 ppm in molasses and 0.026 ppm in orange oil. It should be noted that data for wet pulp and molasses are no longer required as per Table I of the Residue Chemistry Test Guidelines EPA OPPTS 860.1000. The registrant believes that the results from these studies are adequate to support the proposed tolerance of 0.1 ppm pendimethalin in or on citrus fruit crop group, and in processed citrus commodities.

iii. Residue field trials were conducted in two major mint producing states in the United States at both the 1x rate of 2 lbs ai/A and an exaggerated rate of 10 lbs ai/A (5x the typical application rate). Fresh mint foliage samples were either harvested and directly analyzed or processed into mint oil before analyses. The registrant believes that the results from these studies support the proposed tolerances of 0.2 ppm pendimethalin in mint foliage (leaves and stems) and 1.0 ppm pendimethalin in mint oil.

B. Toxicological Profile

1. *Acute toxicity*. The acute oral lethal dose (LD_{50}) values for pendimethalin technical in the Wistar rat are 1,250 milligrams/kilograms/body weight (mg/kg/bwt) (males) and 1,050 mg/kg/bwt (females). The acute dermal LD_{50} was greater than 5,000 mg/kg in New Zealand white rabbits. The 4–hour rat inhalation lethal concentration (LC_{50}) was > 320 milligram per liter (mg/L) (nominal concentration). Pendimethalin was shown to be slightly irritating to rabbit eyes and non-irritating to rabbit skin. Pendimethalin did not cause skin sensitization in guinea pigs.

2. *Genotoxicity*. Extensive mutagenicity studies conducted to investigate point and gene mutations, DNA damage and chromosomal aberration, using *in vitro* and *in vivo* test systems show pendimethalin to be non-genotoxic.

3. *Reproductive and developmental toxicity*. Results from a 2-generation rat reproduction study showed the no-observed adverse effect level (NOAEL) for parental and reproductive toxicity to be 2,500 ppm (172 mg/kg bwt/day) and the lowest-observed adverse effect level (LOAEL) to be 5,000 ppm (346 mg/kg/bwt/day). No developmental toxicity was observed in either the rat or rabbit developmental toxicity studies, nor was there any evidence in the 2-generation rat reproduction study that there was developmental or reproductive toxicity at dose levels below those in which parental toxicity was observed. For rabbits, the developmental toxicity NOAEL was > 60 mg/kg/day, the highest dose tested (HDT). The maternal NOAEL was > 60 mg/kg/day, based on mortality observed at 125 mg/kg/day in a pilot study. For rats, there were no maternal or developmental effects at any dose level and the NOAELs for both maternal and developmental effects were ≧ 500 mg/kg/day, the HDT.

4. *Subchronic toxicity*. A 90–day feeding study was conducted in rats and dogs. The NOAELs for these studies were 500 ppm (50 mg/kg/bwt/day) and 2,500 ppm (62.5 mg/kg/bwt/day) for the rat and dog studies, respectively.

5. *Chronic toxicity*. The chronic toxicity of pendimethalin has been extensively investigated in three species (i. e., the rat, mouse, and dog). The results are as follows:

i. *Rats*. In an initial 2–year feeding study in Sprague-Dawley rats, conducted at dose levels of 0, 100, 500, and 5,000 ppm (corresponding to dietary intakes of 0, 5, 25, and 250 mg/kg/bwt/day, respectively), a clear NOAEL was established at 500 ppm (25 mg/kg/bwt/day). The LOAEL was set at 5,000 ppm (250 mg/kg/bwt/day) based on decreased survival, body weight gain and food consumption, increased gamma glutamyl transferase and cholesterol, an increase in absolute and/or relative liver weight, generalized icterus, dark adipose tissue in females, diffusely dark thyroids and follicular cell hyperplasia of the thyroid. In a second 2–year feeding study in rats, conducted at dose levels of 0, 1,250, 2,500, 3,750, and 5,000 ppm (corresponding to dietary intakes of 0, 51, 103, 154, and 213 mg/kg/bwt/day, respectively), a NOAEL was not determined. The LOAEL of less than or equal to 1,250 ppm (≧ 51 mg/kg/bwt/day) was based on non-neoplastic thyroid follicular cell changes and increased liver weight.

ii. *Mouse*. Pendimethalin technical was administered at dietary concentrations of 100, 500, and 5,000 ppm (corresponding to dose levels of 12.3, 62.3 and 622.1 mg/kg/bwt/day in males and 15.6, 78.3, and 806.9 mg/kg/bwt/day in females) to CD-1 mice for 18-months. In this study, the NOAEL was 500 ppm (62.3 mg/kg/bwt/day) and the LOAEL, based on mortality, body weight decrease, organ weight changes and amyloidosis, was 5,000 ppm (622.1 mg/kg/ bwt/day).

iii. *Dog*. In a 2–year oral (capsule) study, conducted at dose levels of 0, 12.5, 50 and 200 mg/kg/bwt/day, the NOAEL was equal to or greater than the maximum dose tested ≧ 200 mg/kg/bwt/day with no LOAEL established.

Pendimethalin has been classified as a Group C, ''possible human carcinogen,'' chemical by EPA based on a statistically significant increased trend and pairwise comparison between the high dose group and controls for thyroid follicular cell adenomas in male and female rats. EPA recommended using the chronic population adjusted dose (cPAD) approach for quantification of human risk. Therefore, the cPAD is deemed protective of all chronic human health effects, including cancer.

6. *Animal metabolism*. Adequate goat and poultry metabolism studies are available for pendimethalin. As no poultry feed items are associated with carrots, citrus fruit crop group processed citrus commodities, or mint, poultry metabolism studies are not relevant to this petition. In addition, the registrant has determined that there is no reasonable expectation of finite pendimethalin residues of concern in animal commodities as a result of use on multiple crops and no tolerances for pendimethalin residues of concern in livestock commodities are needed.

7. *Endocrine disruption*. Collective results from several mechanistic studies provide support that pendimethalin disrupts thyroid-pituitary hormonal balance. An analysis of the data obtained from these studies supports fluctuations in thyroid hormones (T3 and/or T4) at dietary concentrations of 500 ppm (31 mg/kg/bwt/day) and greater. However, no fluctuations in thyroid hormones were observed at 100 ppm (10 mg/kg/bwt/day) in either of the 14–day special feeding studies, supporting a NOAEL for thyroid effects of 100 ppm or 10 mg/kg/bwt/day. As the cPAD is based on the NOAEL of 10 mg/kg/bwt/day obtained from these studies, thyroid hormonal changes are already accounted for in the characterization of the potential risks to humans. Moreover, because of species differences in thyroid gland physiology, slight fluctuations in thyroid hormone levels noted in rats may not be applicable to humans. In addition, collective organ weights and histopathological findings from the 2-generation rat reproduction study, as well as from the subchronic and chronic toxicity studies in 3 different animal species demonstrate no apparent estrogenic effects or treatment-related effects on any other component of the endocrine system.

C. Aggregate Exposure

Pendimethalin is widely used as a pre-emergent herbicide to control broad-leaf weeds in both food and non-food crops, as well as non-agricultural use sites including residential lawns. In examining aggregate exposure, FQPA directs EPA to consider available information concerning exposures from the pesticide residue in food and water (dietary) and all other non-occupational exposures. The primary non-food sources of exposure the Agency evaluates include drinking water (whether from groundwater or surface water), and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). The potential for aggregate exposure from all registered and proposed uses is discussed below:

1. *Dietary (food) exposure*. Tolerances have been established (40 CFR 180.361) for the combined residues of pendimethalin and its 3,5-dinitrobenzyl alcohol metabolite (CL 202347) in or on a variety of food commodities at levels ranging from 0.05 ppm in rice grain to 0.1 ppm in corn, peanuts, soybeans and other commodities. Based on conservative assumptions of tolerance level residues and 100% crop treatment with pendimethalin, the EPA's Dietary Exposure Evaluation Model (DEEM) estimates chronic dietary exposure to pendimethalin from all currently registered uses to be only 0.00042 mg/kg/day (< 1% cPAD) for the overall U. S. population. The estimated most highly exposed DEEM subgroup for pendimethalin is non-nursing infants at a level of 0.00140 mg/kg/day (< 2%).

Additional maximum dietary contributions, (of up to 0.000498 mg/kg/bwt/day and 0.001294 mg/kg/bwt/day for the general U.S. population and for non-nursing infants less than 1–year old, respectively) anticipated from use on carrots and citrus fruit crop group will still utilize < 1% (actual 0.5%) and < 2% (actual 1.3%) of the cPAD for the respective population subgroups. The additional dietary burden that will result from the pendimethalin tolerances in mint and mint oil will also be insignificant. Thus, the American Cyanamid Company believes that there should be no reason for concern from the additional dietary burden that will result from the proposed tolerances of pendimethalin in carrots, citrus fruit

crop group, and mint because the contribution to the cPAD will be insignificant.

i. *Drinking water.* Pendimethalin has low water solubility and a strong absorption to soil, which makes it essentially immobile in all soil types. Therefore, American Cyanamid Company concludes that there is no concern for the potential for pendimethalin to runoff to surface water or leach to ground water. No Maximum Concentration Level and no Health Advisory Level has been established for residues of pendimethalin in drinking water. A pendimethalin drinking water exposure analysis for a 10 kg child shows that a chronic exposure from a worst case dietary intake (drinking water only) of 0.0018 mg/kg/day would utilize < 2% of the cPAD. Thus, the American Cyanamid Company believes that contributions to the dietary burden from residues of pendimethalin in water, alone, would be inconsequential.

2. *Non-dietary exposure.* Pendimethalin is currently registered for use on the following residential and non-food sites: ornamental lawns, grasses, ground covers, turf, and ornamental plantings, which are short- and intermediate-term non-occupational exposure scenarios. Thus, the American Cyanamid Company believes that the estimates margins of exposure (MOEs) for residential applicators (MOE = 833) and residential post-application exposures to children (MOE = 111) are more than adequate.

D. Cumulative Effects

The Agency has not yet published guidelines to determine whether pendimethalin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, pendimethalin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, the American Cyanamid Company assumes that pendimethalin does not have a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above and based on the completeness and reliability of the toxicity data, the American Cyanamid Company concludes that the total aggregate exposure to pendimethalin from food will utilizes less than 1% of the cPAD for the overall U.S. population. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to pendimethalin in drinking water and from non-dietary non-occupational exposures, the American Cyanamid Company does not expect the aggregate exposure to exceed 100% of the cPAD. The registrant concludes that the aggregate risks estimated from the following three scenarios: (i) < 4% of the cPAD for chronic dietary exposures (food plus water), (ii) MOE = 680 for chronic dietary exposures (food plus water) plus residential applicator exposures, and (iii) MOE = 107 for chronic dietary exposures (food plus water) plus residential post-application exposures to children, do not exceed the Agency's levels of concern. Thus, the American Cyanamid Company concludes that there is a reasonable certainty that no harm will result from aggregate exposure to pendimethalin residues as a result of the establishment of the proposed tolerance in carrots, citrus fruit crop group, and processed citrus commodities, mint and mint oil.

2. *Infants and children.* The major identifiable subgroup with the highest aggregate exposure is non-nursing infants less than 1–year old. In assessing the potential for additional sensitivity of infants and children to residues of pendimethalin, the data from developmental toxicity studies in the rat and rabbit, and a 2-generation reproduction study in the rat has been considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during prenatal development. Reproduction studies provide information relating to effects on the reproductive capabilities of parental animals from exposure to the pesticide as well as additional data on systemic toxicity.

The prenatal and postnatal toxicology data base for pendimethalin is complete with respect to current toxicological data requirements. The data base does not indicate a potential for increased sensitivity from prenatal or postnatal exposure. As mentioned in item B.3. above, no developmental toxicity was observed in either the rat or rabbit developmental toxicity studies, nor was there any evidence in the 2-generation rat reproduction study that there was developmental or reproductive toxicity at dose levels below those in which parental toxicity was observed. For rabbits, the developmental toxicity NOAEL was > 60 mg/kg/day, the HDT. The maternal NOAEL was > 60 mg/kg/day, based mortality observed at 125 mg/kg/day in a pilot study. For rats, there were no maternal or developmental effects at any dose level and the NOAELs for both maternal and developmental effects were ≧ 500 mg/kg/day, the HDT. In the 2-generation reproductive toxicity study in rats, the parental and reproductive NOAELs were 172 mg/kg/day. The reproductive LOAEL of 346 mg/kg/day was based on decreased pup weight, which occurred in the presence of parental (systemic) toxicity at 346 mg/kg/day.

FFDCA section 408 provides that EPA may apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base. Based on current toxicological data requirements, the toxicology data base for pendimethalin is complete. Furthermore, the reproductive NOAEL of 172 mg/kg/day is seventeen-fold higher than the NOAEL of 10 mg/kg/day used for the cPAD. Additionally, the reproductive LOAEL occurred in the presence of parental (systemic) toxicity, and there was no evidence of developmental toxicity in either the rat or the rabbit studies. Therefore, the American Cyanamid Company believes that these proposed tolerances do not represent any unacceptable prenatal or postnatal risk to infants and children.

Using the conservative exposure assumptions described above, and based on previous EPA reports, the American Cyanamid Company has concluded that aggregate exposure to pendimethalin from food will utilize less than 2% of the cPAD for infants and children. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to pendimethalin in drinking water and from non-dietary, non-occupational exposure, the American Cyanamid Company does not expect the aggregate exposure to exceed 100% of the cPAD. Thus, the registrant concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to pendimethalin residues.

F. International Tolerances

There are no Codex, Canadian or Mexican International Maximum Residue Levels established for residues of pendimethalin in carrots, citrus fruit

crop group and processed citrus commodities, or mint at this time.

2. Rohm and Haas Company

PP 7F4824

EPA has received a pesticide petition (PP 7F4824) from Rohm and Haas Company, 100 Independence Mall West, Phila., PA 19106-2399 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for indirect or inadvertent residues of tebufenozide [benzoic acid, 3,5-dimethyl-, 1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide] and its metabolite [Benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-[4-(1-hydroxyethyl) benzoyl] hydrazide] in or on the RAC grass forage, fodder and hay at 0.5 parts per million (ppm) and forage, fodder, straw and hay of nongrass animal feeds at 0.5 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of tebufenozide in plants (grapes, apples, rice and sugar beets) is adequately understood for the purpose of this tolerance. The metabolism of tebufenozide in all crops was similar and involves oxidation of the alkyl substituents of the aromatic rings primarily at the benzylic positions. The extent of metabolism and degree of oxidation are a function of time from application to harvest. In all crops, parent compound comprised the majority of the total dosage. None of the metabolites were in excess of 10% of the total dosage. Tebufenozide, the metabolite, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-[4-(1-hydroxyethyl) benzoyl, and sugar conjugates of the metabolite were detected in a confined rotation crop study.

2. *Analytical method*. Validated high performance liquid chromatographic (HPLC) analytical methods using ultraviolet (UV) or mass selective (MS) detection are employed for measuring residues of tebufenozide and its metabolite in grains, forage, fodder, stover, hay, and straw. The methods involve extraction by blending with solvents, purification of the extracts by liquid-liquid partitions and final purification of the residues using solid phase extraction column chromatography. The limit of quantitation (LOQ) of the method for all matrices is 0.02 ppm for tebufenozide and its metabolite.

3. *Magnitude of residues*. Field rotation crop residue trials were conducted and residues of tebufenozide and its metabolite were measured. Results of analyses showed that residues of tebufenozide and its metabolite will not exceed 0.1 ppm in forage of legumes and 0.5 ppm in forage, hay or straw of cereal grains.

B. Toxicological Profile

1. *Acute toxicity*—Acute toxicity studies with technical grade. Oral LD_{50} in the rat is > 5 grams for males and females - Toxicity Category IV; dermal LD_{50} in the rat is = 5,000 mg/kg for males and females - Toxicity Category III; inhalation LD_{50} in the rat is > 4.5 mg/l - Toxicity Category III; primary eye irritation study in the rabbit is a non-irritant; primary skin irritation in the rabbit > 5 mg - Toxicity Category IV. Tebufenozide is not a sensitizer.

2. *Genotoxicty*. Several mutagenicity tests which were all negative. These include an Ames assay with and without metabolic activation, an in vivo cytogenetic assay in rat bone marrow cells, and *in vitro* chromosome aberration assay in CHO cells, a CHO/HGPRT assay, a reverse mutation assay with *E. Coli*, and an unscheduled DNA synthesis (UDS) assay in rat hepatocytes.

3. *Reproductive and developmental toxicity*—i. In a prenatal developmental toxicity study in Sprague-Dawley rats 25/group Tebufenozide was administered on gestation days 6-15 by gavage in aqueous methyl cellulose at dose levels of 50, 250, or 1,000 mg/kg/day and a dose volume of 10 ml/kg. There was no evidence of maternal or developmental toxicity; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

ii. In a prenatal developmental toxicity study conducted in New Zealand white rabbits 20/group Tebufenozide was administered in 5 ml/kg of aqueous methyl cellulose at gavage doses of 50, 250, or 1,000 mg/kg/day on gestation days 7-19. No evidence of maternal or developmental toxicity was observed; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

iii. In a 1993 2-generation reproduction study in Sprague-Dawley rats Tebufenozide was administered at dietary concentrations of 0, 10, 150, or 1,000 ppm (0, 0.8, 11.5, or 154.8 mg/kg/day for males and 0, 0.9, 12.8, or 171.1 mg/kg/day for females). The parental systemic NOAEL was 10 ppm (0.8/0.9 mg/kg/day for males and females, respectively) and the lowest observed adverse effect level (LOAEL) was 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively) based on decreased body weight, body weight gain, and food consumption in males, and increased incidence and/or severity of splenic pigmentation. In addition, there was an increased incidence and severity of extramedullary hematopoiesis at 2,000 ppm. The reproductive NOAEL was 150 ppm. (11.5/12.8 mg/kg/day for males and females, respectively) and the LOAEL was 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively) based on an increase in the number of pregnant females with increased gestation duration and dystocia. Effects in the offspring consisted of decreased number of pups per litter on postnatal days 0 and/or 4 at 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively) with a NOEL of 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively).

In a 1995 2-generation reproduction study in rats Tebufenozide was administered at dietary concentrations of 0, 25, 200, or 2,000 ppm (0, 1.6, 12.6, or 126.0 mg/kg/day for males and 0, 1.8, 14.6, or 143.2 mg/kg/day for females). For parental systemic toxicity, the NOAEL was 25 ppm (1.6/1.8 mg/kg/day in males and females, respectively), and the LOAEL was 200 ppm (12.6/14.6 mg/kg/day in males and females), based on histopathological findings (congestion and extramedullary hematopoiesis) in the spleen. Additionally, at 2,000 ppm (126.0/143.2 mg/kg/day in M/F), treatment-related findings included reduced parental body weight gain and increased incidence of hemosiderin-laden cells in the spleen. Columnar changes in the vaginal squamous epithelium and reduced uterine and ovarian weights were also observed at 2,000 ppm, but the toxicological significance was unknown. For offspring, the systemic NOAEL was 200 ppm. (12.6/14.6 mg/kg/day in males and females), and the LOAEL was 2,000 ppm (126.0/143.2 mg/kg/day in M/F) based on decreased body weight on postnatal days 14 and 21.

4. *Subchronic toxicity*. In a 21–day dermal toxicity study, Crl: CD rats (6/sex/dose) received repeated dermal administration of either the technical 96.1% product RH-75,992 at 1,000 mg/kg/day limit-dose or the formulation 23.1% a.i. product RH-755,992 2F at 0, 62.5, 250, or 1,000 mg/kg/day, 6 hours/day, 5 days/week for 21 days. Under conditions of this study, RH-75,992

Technical or RH-75,992 2F demonstrated no systemic toxicity or dermal irritation at the HDT 1,000 mg/kg/ during the 21–day study. Based on these results, the NOAEL for systemic toxicity and dermal irritation in both sexes is 1,000 mg/kg/day HDT. A LOAEL for systemic toxicity and dermal irritation was not established.

5. *Chronic toxicity*— i. A 1–year dog feeding study with a (LOAEL) of 250 ppm, 9 mg/kg/day for male and female dogs based on decreases in red blood cells (RBC), HCT, and HGB, increases in Heinz bodies, methemoglobin, MCV, MCH, reticulocytes, platelets, plasma total bilirubin, spleen weight, and spleen/body weight ratio, and liver/body weight ratio. Hematopoiesis and sinusoidal engorgement occurred in the spleen, and hyperplasia occurred in the marrow of the femur and sternum. The liver showed an increased pigment in the Kupffer cells. The NOAEL for systemic toxicity in both sexes is 50 ppm (1.9 mg/kg/day).

ii. An 18–month mouse carcinogenicity study with no carcinogenicity observed at dosage levels up to and including 1,000 ppm.

iii. A 2–year rat carcinogenicity with no carcinogenicity observed at dosage levels up to and including 2,000 ppm (97 mg/kg/day and 125 mg/kg/day for males and females, respectively).

6. *Animal metabolism*. The pharmacokinetics and metabolism of tebufenozide were studied in female Sprague-Dawley rats (3-6/sex/group) receiving a single oral dose of 3 or 250 mg/kg of RH-5992 ^{14}C labeled in one of three positions (A-ring, B-ring or N-butylcarbon). The extent of absorption was not established. The majority of the radiolabeled material was eliminated or excreted in the feces within 48 hours within 48 hours; small amounts (1 to 7% of the administered dose) were excreted in the urine and only traces were excreted in expired air or remained in the tissues. There was no tendency for bioaccumulation. Absorption and excretion were rapid. A total of 11 metabolites, in addition to the parent compound, were identified in the feces; the parent compound accounted for 96 to 99% of the administered radioactivity in the high dose group and 35 to 43% in the low dose group. No parent compound was found in the urine; urinary metabolites were not characterized. The identity of several fecal metabolites was confirmed by mass spectral analysis and other fecal metabolites were tentatively identified by cochromatography with synthetic standards. A pathway of metabolism was proposed based on these data. Metabolism proceeded primarily by oxidation of the three benzyl carbons, two methyl groups on the B-ring and an ethyl group on the A-ring to alcohols, aldehydes or acids. The type of metabolite produced varies depending on the position oxidized and extent of oxidation. The butyl group on the quaternary nitrogen also can be cleaved (minor), but there was no fragmentation of the molecule between the benzyl rings.

No qualitative differences in metabolism were observed between sexes, when high or low dose groups were compared or when different labeled versions of the molecule were compared.

7. *Metabolite toxicology*. The absorption and metabolism of tebufenozide were studied in a group of male and female bile-duct cannulated rats. Over a 72 hour period, biliary excretion accounted for 30% male to 34% female of the administered dose while urinary excretion accounted for about 5% of the administered dose and the carcass accounted for < 0.5% of the administered dose for both males and females. Thus systemic absorption (percent of dose recovered in the bile, urine and carcass) was 35% male to 39% female. The majority of the radioactivity in the bile (20% male to 24% female of the administered dose) was excreted within the first 6 hours post-dosing indicating rapid absorption. Furthermore, urinary excretion of the metabolites was essentially complete within 24 hours post-dosing. A large amount [67% (female) to 70% (male) of the administered dose was unabsorbed and excreted in the feces by 72 hours. Total recovery of radioactivity was 105% of the administered dose.

A total of 13 metabolites were identified in the bile; the parent compound was not identified, i.e., unabsorbed compound, nor were the primary oxidation products seen in the feces in the pharmacokinetics study. The proposed metabolic pathway proceeded primarily by oxidation of the benzylic carbons to alcohols, aldehydes or acids. Bile contained most of the other highly oxidizedproducts found in the feces. The most significant individual bile metabolites accounted for 5% to 18% of the total radioactivity (female and/or male). Bile also contained the previously undetected (in the pharmacokinetics study] ''A'' Ring ketone and the ''B'' Ring diol. The other major components were characterized as high molecular weight conjugates. No individual bile metabolite accounted for > 5% of the total administered dose. Total bile radioactivity accounted for about 17% of the total administered dose.

No major qualitative differences in biliary metabolites were observed between sexes. The metabolic profile in the bile was similar to the metabolic profile in the feces and urine.

C. Aggregate Exposure

1. *Dietary exposure— From food and feed uses*. Tolerances have been established (40 CFR 180.482) for the residues of tebufenozide, in or on walnuts at 0.1 ppm, pome fruit at 1.5 ppm, pecans at 0.01, kiwifruit at 0.5ppm, leafy and cole crop vegetables at 10 ppm and wine grapes at 0.5 ppm. Numerous section 18 tolerances have been established at levels ranging from 0.3 ppm in sugar beet roots to 5.0 ppm in turnip tops. The current petition requests establishment of tolerances due to indirect or inadvertent residues of tebufenozide and its metabolite in or on grass forage, fodder and hay and forage, fodder, straw and hay of nongrass animal feeds Risk assessments were conducted by Rohm and Haas to assess dietary exposures and risks from tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide and are presented in the followingdiscussion:

i. *Food—Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. Toxicity observed in oral toxicity studies were not attributable to a single dose (exposure). No neuro- or systemic toxicity was observed in rats given a single oral administration of tebufenozide at 0, 500, 1,000 or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of tebufenozide at 1,000 mg/kg/day (limit-dose) during gestation to pregnant rats or rabbits. This risk is considered to be negligible.

ii. *Chronic exposure and risk*. The RfD used for the chronic dietary analysis is 0.018 mg/kg/day. In conducting this chronic dietary (food) exposure assessment, Rohm and Haas used (a) tolerance level residues for pecans, walnuts, wine and sherry, imported apples and all other commodities with established or pending tebufenozide tolerances; and (b) percent crop-treated (%CT) information on some of these crops. Further refinement using anticipated residue values and additional %CT information would result in a lower estimate of chronic dietary exposure. The Novigen DEEM system was used for this chronic dietary exposure analysis. The subgroups listed below are (c) the U.S. Population (48

States); (d) those for infants and children; and (e) the other subgroups (adult) for which the percentage of the reference dose (RfD) occupied is greater than that occupied by the subgroup U.S. population (48 States). The results are summarized below:

Groups	%RfD (percentage)
U.S. Population	10.0%
All Infants (< 1–year)	12.2%
Nursing Infants (< 1–year old)	5.7%
Non-Nursing Infants (< 1–year old)	15.0%
Children (1-6 years old)	22.5%
Children (7-12 years old)	14.1%
Females (13 + years old, nursing)	10.1%
U.S. Population autumn season	10.3%
U.S. Population winter season	10.1%
Non-Hispanic Blacks	10.4%
Non-Hispanic Other than Black or White	11.0%
Northeast Region	10.3%
Southern Region	10.1%
Western Region	10.5%
Pacific Region	10.7%

iii. *Drinking water*— i. *Acute exposure and risk*. Because no acute dietary endpoint was determined, Rohm and Haas concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

iv. *Chronic exposure and risk*. Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile. Under certain conditions tebufenozide appears to have the potential to contaminate ground and surface water through runoff and leaching; subsequently potentially contaminating drinking water. There are no established Maximum Contaminant Levels (MCL) for residues of tebufenozide in drinking water and no Health Advisories (HA) have been issued for tebufenozide therefore these could not be used as comparative values for risk assessment. Therefore, potential residue levels for drinking water exposure were calculated previously by EPA using GENEEC (surface water) and SCIGROW (ground water) for human health risk assessment. Because of the wide range of half-life values (66-729 days) reported for the aerobic soil metabolism input parameter a range of potential exposure values were calculated. In each case the worst case upper bound exposure limits were then compared to appropriate chronic drinking water level of concern (DWLOC). In each case the calculated exposures based on model data were below the DWLOC.

2. *Non-dietary exposure*. Tebufenozide is not currently registered for use on any residential non-food sites. Therefore , there is no chronic, short- or intermediate-term exposure scenario.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, Rohm and Haas has not assumed that tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide has a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population*— i. *Acute risk*. Since no acute toxicological endpoints were established, no acute aggregate risk exists.

ii. *Chronic risk*. Using the conservative exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, Rohm and Haas has concluded that dietary (food only) exposure to tebufenozide will utilize 10.0% of the RfD for the U.S. population. Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile; thus, tebufenozide could potentially leach to groundwater and runoff to surface water under certain environmental conditions. The modeling data for tebufenozide indicate levels less than OPP's drinking water levels concern (DWLOC). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. There are no registered residential uses of tebufenozide. Since there is no potential for exposure to tebufenozide from residential uses, Rohm and Haas does not expect the aggregate exposure to exceed 100% of the RfD.

iii. *Short- and intermediate-term risk*. Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Since there are currently no registered indoor or outdoor residential non-dietary uses of tebufenozide and no short- or intermediate-term toxic endpoints, short- or intermediate-term aggregate risk does not exist.

2. *Infants and children*— i. *In general*. In assessing the potential for additional sensitivity of infants and children to residues of tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide, EPA previously considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

The toxicology data base for tebufenozide is complete and includes acceptable developmental toxicity studies in both rats and rabbits as well as a 2-generation reproductive toxicity studies in rats.

The EPA determined that the data provided no indication of increased sensitivity of rats or rabbits to in utero and/or postnatal exposure to tebufenozide. No maternal or developmental findings were observed in the prenatal developmental toxicity studies at doses up to 1,000 mg/kg/day in rats and rabbits. In the 2-generation reproduction studies in rats, effects occurred at the same or lower treatment levels in the adults as in the offspring.

Rohm and Haas concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide residues.

F. International Tolerances

There are currently no CODEX, Canadian or Mexican maximum residue levels (MRLs) established for tebufenozide in rotation crops so no harmonization issues are required for this action.

3. Rohm and Haas Company

PP 9F5058

EPA has received a pesticide petition (PP 9F5058) from Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for combined residues of RH-117281 Technical Benzamide-3,5-dichloro-N-(3-chloro-1-ethyl-1-methyl-2oxopropyl)-4-methyl and metabolites 3,5-dichloro-4-hydroxy methyl-benzoic acid and 3,5-dichloro-1,4-benzene dicarboxylic (RH-141452 and RH-141455) in or on the raw agricultural commodity (RAC) potatoes at 0.1 parts per million (ppm), grapes at 5 ppm, and raisins at 15 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of RH-117281 Technical in plants (grapes and potatoes) is adequately understood for the purposes of these tolerances. There were no significant metabolites other than the parent compound in grapes. Residues in grapes were surface residues of parent RH-117281 and minor amounts of hydrolysis and photolysis degradates. In potatoes, two minor rat metabolites, RH-141452 and RH-141455, comprised the majority of the residue. No other metabolites were present in excess of 10% of the total dosage. It is most likely that the source of these residues is extremely low level uptake of highly degraded metabolites from the soil, rather than metabolism within the plant, since these compounds are highly metabolized, but there are no intermediate products found in the potato.

2. *Animal metabolism*. The metabolism of RH-117281 Technical in food-producing animals (dairy goats) is adequately understood. Hen metabolism is not required for the current submission because no components of grape or potato are fed to poultry. Metabolism in laboratory and food-producing animals was similar and extensive, occurring through multiple pathways involving primary hydrolysis, glutathione-mediated reactions, and reductive dehalogenation; secondary oxidation; and terminal glucuronic and amino acid conjugation. RH-117281 Technical and its residues are rapidly excreted in animals. No significant residues in these food commodities.

3. *Analytical method*. Tolerance enforcement methods using gas chromatography/electron capture detection (GC/ECD) or gas chromatography/mass selective detection (GC/MSD), have been developed for RH-117281 in grapes, grape juice and raisins. The limit of quantification (LOQ) is 0.01 ppm for all matrices. Average recoveries are 95.8-106% for grapes, 84.2-101% for juice, and 85.9-108% for raisins, over the range of fortifications.

A tolerance enforcement method using GCECD or GC/MSD detection has also been developed for RH-117281 in potatoes and for the metabolites RH-141452 and RH-141455 in potatoes, potato chips and potato flakes. The LOQ for all analytes is 0.02 ppm for all matrices.

The methods involve extraction with solvent, filtration, liquid-liquid partition, and final purification of the residues using solid phase column chromatography. An independent validation of the methods has been completed.

4. *Magnitude of residues*—i. *Grape*. Twelve field residue trials were conducted over two seasons in four States at either 1.25 lb active ingredient (a.i)/acre and 2.50 lb a.i./acre (1.40 kiligram/hectare Kg/ha and 2.81 Kg/ha) or 2.0 lbs a.i/acre and 4.0 lbs a.i acre (2.25 Kg/ha and 4.49 Kg/ha). Ten applications were made in each trial. In two of the trials, fruit was harvested at 0, 7, 14, and 21 days after the final application. In the remaining trials, samples were taken at 13 or 14 days after the final application. The proposed seasonal use rate is 1.6 lb a.i/acre (1.8 Kg/ha) with a 14– day pre-harvest interval (PHI).

Samples were analyzed for residues of RH-117281. Residue levels in the 34 samples from the 2.0 or 2.5 lb/acre (2.25 and 2.81 kg/ha) rates and 13 or 14 day PHI ranged from 0.218 to 4.52 ppm. The average residue was 0.88 ppm.

These data support a permanent tolerance of 5.0 ppm on grapes. Grape juice (clarified and unclarified) and raisins were generated from two RAC samples from one residue trial. Residues in grape juice were much lower than in the whole fruit, roughly 10% of the levels in the RAC. Residues concentrated in the raisins. The data support a permanent tolerance of 15 ppm on raisins.

ii. *Potatoes*. Sixteen field residue trials were conducted over two seasons in 10 States at either 1.25 lb a.i./acre and 2.50 lb a.i/a (1.40 kg/ha and 2.81 kg/ha) or 2.0 lbs a.i./acre and 4.0 lbs a.i./acre (2.25 kg/ha and 4.49 kg/ha). Ten applications were made in each trial. In two of the trials, tubers were harvested at 0, 3, 7, and 14 days after the final application. In the remaining trials, samples were taken at 3 days after the final application. The proposed maximum seasonal use rate is 1.6 lb a.i./acre (1.8 kg/ha) with a 3–day PHI. Samples were analyzed for parent RH-117281 and the two metabolites RH-141452 and RH-141455.

Samples were below the LOQ in nearly all cases. These residues support the establishment of a permanent tolerance of 0.1 ppm on potatoes.

Twelve residue trials were conducted in 7 regions in Canada during 1998 at 2.0 kg/ha and a PHI of 3–days. There were no residues of any analyte above the LOQ of 0.02 ppm in any sample.

A potato process study was conducted. Residues of two metabolites concentrated in flakes, consistent with loss of water from the potato.

B. Toxicological Profile

1. *Acute toxicity*. RH-117281 Technical was practically non-toxic by ingestion of a singe oral dose in rats and mice lethal dose (LD_{50}) > 5,000 milligram/kilogram (mg/kg), practically non-toxic by dermal application to rats (LD_{50} > 2,000 mg/kg), and practically non-toxic to rats after a 4–hour inhalation exposure with an LC_{50} value of > 5.3 milligrams per liter (mg/L) (highest attainable concentration), is not considered to be a primary eye irritant or a skin irritant and is not a dermal sensitizer. The technical material was non irritating to skin after single applications and moderately irritating to eyes. RH-117281 Technical produced delayed contact hypersensitivity in the guinea pig at concentrations of 2,500 ppm and higher. An acute neurotoxicity study in rats did not produce any neurotoxic or neuropathologic effects with a NOAEL > 2,000 mg/kg.

2. *Genotoxicity*. RH-117281 was nonmutagenic in a standard battery of tests. In *in vitro* assays, RH-117281 showed no evidence of mutagenic activity in an Ames and CHO/HGPRT assays for gene mutation, and no evidence of structural chromosomal aberrations in the CHO *in vitro* cytogenetic study. As predicted by its antitubulin mode of action, mitotic accumulation and polyploidy were noted at cytotoxic doses in the *in vitro* chromosomal assay. However, there was no evidence of structural or numerical chromosomal aberrations when RH-117281 Technical was tested *in vivo* in the mouse micronucleus test.

3. *Reproductive and developmental toxicity*. NOAELs for developmental and maternal toxicity to RH-117281 Technical were established at 1,000 mg/kg/day, highest dose tested (HDT) in both the rat and rabbit. No signs of developmental toxicity were exhibited.

In a 2-generation reproduction study in the rat, RH-117281 Technical had no adverse effects on reproductive performance or pup development at doses up to and exceeding 1474 mg/kg/day, the limit dose tested (LDT). This NOAEL was 20-fold higher than the NOAEL for adult toxicity of 71 mg/kg/day. A delay in periweaning weight gain and associated spleen effects in the F1 and F2a litters were shown in the F2b litters to be a secondary effect related to feed refusal due to palatability of the treated diets, and not to a systemic toxic effect. The consequences of feed refusal due to palatability do not constitute an adverse effect relevant to human health risk assessment.

4. *Subchronic toxicity*. The NOAEL in a 90–day rat subchronic feeding study was 1,509 mg/kg/day in males and 1,622 mg/kg/day in females (HDT). RH-117281 Technical did not produce neurotoxic or neuropathologic effects.

In a 90–day feeding study with mice, the NOAEL was 436 mg/kg/day in males and 574 mg/kg/day in females based on a slight decrease in weight gain among the females only at the LOAEL of 1,666 mg/kg/day.

A 90–day dog feeding study gave a NOAEL of 55 mg/kg/day in males and 62 mg/kg/day in females based on increased liver weights without a corresponding clinical or histopathologic change in females only at 322 mg/kg/day.

No signs of systemic toxicity were observed when RH-117281 Technical was administered dermally to rats for 28 days at a limit dose of 1,000 mg/kg/day. This occurred despite skin irritation at all doses tested (150, 400, and 1,000 mg/kg/day). Similarly, *in vivo* dermal absorption was shown to be low regardless of concentration or formulation type (i.e. < 1-6% of theadministered dose was systemically absorbed after 24 hours).

5. *Chronic toxicity*. In a combined rat chronic/oncogenicity study, the NOAEL for chronic toxicity was 51 mg/kg/day in males and 65 mg/kg/day based on an equivocal increase in relative liver weight at a LOAEL of 328 mg/kg/day in females at the interim sacrifice only. The NOAEL was considered to be 1,058 mg/kg/day in males and 1,331 mg/kg/day in females (HDT, limit dose). No carcinogenicity was observed.

An 18–month mouse carcinogenicity study showed no signs of carcinogenicity or of any other compound-related effect at dosage levels up to 1,021 mg/kg/day in males and 1,289 mg/kg/day in females HDT, limit dose).

The NOAEL in a 1–year feeding study in dogs was 255 mg/kg/day in males and 48 mg/kg/day in females based on minimal effects on body weight (bwt) and body weight gain and increased liver weights in females only at a LOAEL of 278 mg/kg/day.

6. *Animal metabolism*. In pharmacokinetic and metabolism studies in the rat, RH-117281 Technical

was rapidly and extensively absorbed, metabolized and excreted following oral exposure. A total of approximately 60% of the administered dose was systemically absorbed. Plasma levels peaked within 8 hours of dosing, and declined with a half-life of 12-14 hours, consistent with the nearly complete excretion within 48 hours. No evidence of accumulation of the parent compound or its metabolites was observed. The predominant route of excretion was hepatobiliary. Metabolism was found to occur through multiple pathways involving primary hydrolysis, glutathione-mediated reactions, and reductive dehalogenation; secondary oxidation on both the aromatic methyl and the aliphatic side-chain; and terminal glucuronic acid and amino acid conjugation. Altogether, 32 separate metabolites were identified; no single metabolite other than parent RH-117281 accounted for more than 10% of the administered dose. The rapid metabolism and excretion of RH-117281 Technical was a major factor explaining the compound's overall remarkably low toxicity profile in animals.

7. *Metabolite toxicology*. Of these multiple pathways, all three are common to both laboratory (rat) and food-producing animals (goat). Extensive degradation and elimination occurs in animals such that residues are unlikely to accumulate in humans or animals exposed to these residues through the diet. There were no significant metabolites other than the parent RH-117281 in grapes. Two minor metabolites in the rat constituted a major portion of the residue in potato tubers in the ^{14}C-metabolism study. RH-141452 and RH-141455 are not considered toxicologically significant as they were practically non-toxic after acute oral administration in mice, non mutagenic in the Ames test, and rapidly excreted essentially unchanged in rats. Actual residues in field trials never exceeded trace levels approximating the LOQ.

8. *Endocrine disruption*. Based on structure-activity and mode of action information as well as the lack of developmental and reproductive toxicity, RH-117281 Technical is unlikely to exhibit endocrine activity. There was no evidence of a functional or histopathologic change in the male or female reproductive tract, and no indicators of an endocrine effect of any kind below limit doses in mammalian subchronic or chronic studies or in mammalian and avian reproduction studies. A slight thyroid effect at the limit dose (994-1139 mg/kg/day) in the subchronic dog studies was secondary to liver hypertrophy and enlargement at that dose. Collectively, the weight of evidence provides no indication of an endocrine effect of RH-117281 Technical.

9. *Toxicological endpoints*— i. *Acute and short term dietary*. No endpoint of concern was identified for acute or short term (1–7 day) dietary exposure to RH-117281 Technical, and no acute or short term risk assessment is required.

ii. *Chronic dietary*. The proposed RfD for RH-117281 Technical is 0.5 mg/kg/day, based on application of a 100-fold uncertainty factor to the chronic NOAELs in the rat and dog of 51 and 48 mg/kg/day, respectively.

iii. *Carcinogen classification*. There was no evidence of oncogenic potential in two well-conducted lifetime feeding studies in rats and mice, at doses up to and including the limit dose. Thus, RH-117281 Technical should be classified as ''unlikely'' to have carcinogenic potential.

C. Aggregate Exposure

1. *Dietary (food) exposure*. Tolerances are proposed for the residues of RH-117281 Technical in or on potatoes (0.1 ppm), grapes (5 ppm), and raisins (15 ppm). The goat metabolism study demonstrated that there is no reasonable expectation of transfer of residues of RH-117281 Technical into meat or milk from potatoes. There are no grape feed commodities fed to livestock, and no potato or grape feed commodities fed to poultry. There are no other established or proposed United States tolerances for RH-117281 Technical, and no currently registered uses in the United States. Risk assessments were conducted by Rohm and Haas to assess dietary exposures and risks from RH-117281 Technical as follows:

i. *Acute exposure and risk*. No acute endpoint was identified for RH-117281 Technical and no acute risk assessment is required.

ii. *Chronic exposure and risk*. For chronic dietary risk assessment, the proposed tolerance values, as well as anticipated (average) residues and processing factors, were used and the assumption that 100% of all potatoes and grapes will contain residues of RH-117281 Technical at the tolerance or anticipated residue levels. Potential chronic exposures were estimated using USDA food consumption data from the 1989-1992 survey. With the proposed tolerances and anticipated residue levels for RH-117281 Technical, the percentage of the 0.5 mg/kg/day reference dose (RfD) utilized as follows:

Group	AnticipatedResidues Total % RfD	Tolerance Levels Total % RfD
U.S. Population 48 States	0.5	0.1
Nursing Infants < 1 year old	1.0	0.2
Non-Nursing Infants < 1–year old	1.2	< 0.1
Children 1-6 years old	1.7	.1
Children 7-12 years old	0.5	0.1

The chronic dietary risks from these uses do not exceed EPA's level of concern.

2. *Drinking water*. No direct information is available on potential for exposure to RH-117281 Technical from drinking water. However, exposure from drinking water is unlikely to occur as a result of the uses on potatoes or grapes. Submitted environmental fate studies indicat0e that Rh-117281 Technical dissipates rapidly from the environment under all conditions tested, and that is not mobile and poses no threat to groundwater. Furthermore, its environmental metabolites are very snort-lived and also have no potential to leach.

There is no established Maximum Concentration Level (MCL) for residues of RH-117281 Technical in drinking water, and no drinking water health advisory levels have been established. There is no entry for RH-117281 Technical in the ''Pesticides in Groundwater Database'' (EPA 734-12-001, September 1992).

i. *Chronic exposure and risk*. Nevertheless, to assess an upper bound on the potential for exposure from drinking water, chronic exposure to RH-117281 Technical in drinking water was estimated using the generic expected environmental concentration (GENEEC) V1.2 and SCI-GROW models, as directed in the Office of Pesticide Program's Interim Approach for Addressing Drinking Water Exposure. GENEEC is a highly conservative model used to estimate residue concentrations in surface water. SCI=GROW is an equally

conservative model used to estimate residue concentrations in shallow, highly vulnerable groundwater (i.e., sites with sandy soils and depth to groundwater of 10 to 20 feet). As indicated in EPA's drinking water exposure guidance, a very small percentage of people in the United States would derive their drinking water from such sources. GENEEC (56–Day average) and SCI-GROW water exposure values utilizes substantially less than 1% of the RfD for adults and children.

3. *Non-dietary exposure*. RH-117281 Technical is not currently registered for any indoor or outdoor residential or structural uses, and no application is pending; therefore, no non-dietary non-occupational exposure is anticipated.

4. *Aggregate exposure and risk*. The anticipated exposure from food and drinking water combined is < 2% of the RfD, and there is no expectation of other non-occupational exposure. Thus, aggregate exposure of RH-117281 Technical does not exceed EPA's level of concern, and is essentially negligible.

D. Cumulative Effects

At this time, no data are available to determine whether RH-117281 Technical has a common mechanism of toxicity with other substances. Thus, it is not appropriate to include this fungicide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, RH-117281 Technical does not appear to produce a toxic metabolite produced by other substances. In addition, the toxicity studies submitted to support this petition indicate that RH-117281 has only limited toxic potential. No toxic endpoints of potential concern were identified. For the purposes of this tolerance action, therefore, RH-117281 Technical [Benzamide-3,5-dichloro-N-(3-Clair-1-ethyl-1-methyl-2-oxopropyl)-4- methyl] is assumed not to have a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population*— i. *Acute exposure and risk*. Since no acute endpoint was identified for RH-117281 Technical, no acute risk assessment is required.

ii. *Chronic exposure and risk*. Using the conservative exposure assumptions described above and taking into account the completeness and reliability of the toxicity data, the percentage of the RfD that will be utilized by the dietary (food only) exposure to residues of RH-117281 Technical from the proposed tolerances is 0.5% (tolerance levels) and 0.1% (anticipated residues) for the U.S. population. Aggregate exposure (food and water) are expected to be < 1% RfD. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Rohm and Haas concludes there is a reasonable certainty that no harm will result from aggregate exposure to RH-117281 Technical residues to the U.S. population.

2. *Infants and children*—i. *General*. The potential for additional sensitivity of infants and children to residues of RH-117281 Technical is assessed using data from developmental toxicity studies in the rat and rabbit and 2-generation reproduction studies in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

ii. *Developmental toxicity studies—Rats*. In a developmental toxicity study in rats, the maternal NOAEL was 1,000 mg/kg/day, HDT, and the developmental (pup) NOAEL was 1,000 mg/kg/day HDT.

Rabbits. In a developmental toxicity study in rats, the maternal NOAEL was 1,000 mg/kg/day HDT, and the developmental (pup) NOAEL was 1,000 mg/kg/day HDT.

iii. *Reproductive toxicity study—Rats*. In a multigeneration reproductive toxicity study in rats, theparental (systemic) NOAEL was 71 mg/kg/day, based on an equivocal liver effect at the lowest observed adverse effect levels (LOAEL) of 360 mg/kg/day. The NOAEL for reproductive and developmental effects was 1,471 mg/kg/day HDT. No adverse reproductive or developmental effects were observed.

iv. *Prenatal and postnatal sensitivity*. No developmental or reproductive effects were demonstrated for RH-117281 Technical as a result of systemic exposure at up to limit doses of 1,000 and 1,471 mg/kg/day. Additionally, these NOAELs are greater than 20-fold higher than the NOAELs of 48-51 mg/kg/day from the dog and rat chronic studies which are the basis of the RfD. These developmental and reproductive studies indicate that developing and maturing animals are not more sensitive either pre or postnatally than other age groups to RH-117281 Technical; i.e., RH-117281 Technical does not exhibit additional pre or postnatal sensitivity. Thus, reliable data indicate that an additional FQPA uncertainty factor is not necessary to insure an adequate margin of safety for protection of infants and children.

a. *Acute exposure and risk*. No acute endpoint was identified for RH-117281 Technical, and therefore no acute risk assessment is required.

b. *Chronic exposure and risk*. Using the conservative exposure assumptions described above and taking into account the completeness and reliability of the toxicity data, the percentage of the RfD that will be utilized by dietary (food only) exposure to residues of RH-117281 Technical from the proposed tolerances is 1.0% (tolerance levels) and 0.2% (anticipated residues) for children, 1-infants (< 1–year) and 1.7% (tolerance levels) and 0.1% (anticipated residues) for children, 1-6 years old, the most highly exposed subgroups. Aggregate exposure (food and water) are expected to be < 2% RfD. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime.

F. International Tolerances

There are currently no CODEX, Canadian or Mexican maximum residue levels (MRLs) established for RH-117281 Technical in potatoes, potato chips or flakes, grapes or raisins. Thus, no harmonization issues are required to be resolved for this action.

G. Rotation Crop Restrictions

An outdoor C rotation crop study was conducted, in which leafy, root, and grain crops and soybeans were planted back 30, 137, 210, and 365 days following four applications. No individual metabolite comprised greater than or equal to 0.01 ppm in any matrix.

[FR Doc. 99–22455 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6431–4]

Proposed CERCLA Prospective Purchaser Agreement; Canton Industrial Corporation Site; City of Canton, Fulton County, Illinois

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Reponse, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C.

9601 *et seq.*, and the authority of the Attorney General of the United States to compromise and settle claims of the United States as delegated, notice is hereby given of a proposed prospective purchaser agreement concerning the Canton Industrial Corporation site at 260 East Elm Street, Canton, Fulton County, Illinois 61520 with the City of Canton. The agreement requires the City of Canton to pay $500.00 to the Hazardous Substance Superfund; enroll the site, or portions thereof that are reasonable amenable to redevelopment and reuse, in the State of Illinois Site Remediation Program; implement site security measures; and impose appropriate institutional controls. The agreement includes a covenant not to sue the City of Canton under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), contribution protection for the City of Canton under section 113(f)(2), 42 U.S.C. 9613(f)(2), and removal of any liens under section 107(1) of CERCLA, 42 U.S.C. 9607(1). For thirty (30) days followed the date of publication of this notice, the United States will receive written comments relating to the agreement. The United States will consider all comments received and may modify or withdraw its consent to the agreement if comments received disclose facts or considerations which indicate that the agreement is inappropriate, improper, or inadequate. The United States' response to any comments received will be available for public inspection at U.S. EPA, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604. Please contact Nola Hicks at (312) 886–7949 to make arrangements to inspect the comments.

DATES: Comments must be submitted on or before October 1, 1999.

ADDRESSES: The proposed settlement is available for public inspection at U.S. EPA, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604. A copy of the proposed agreement may be obtained from Nola Hicks, at U.S. EPA, Region 5, 77 W. Jackson Boulevard (C–14J), Chicago, IL 60604, phone (312) 886–7949. Comments should reference the Canton Industrial Corporation prospective purchaser agreement, and should be addressed to Nola Hicks.

FOR FURTHER INFORMATION CONTACT: Nola Hicks, at U.S. EPA, Region 5, 77 W. Jackson Boulevard (C–14J), Chicago, IL 60604, phone (312) 886–7949.

Dated: July 27, 1999.

Martise Whiteurst,

Acting Director, Superfund Division, Region 5.

[FR Doc. 99–22741 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–IL; FRL–6087–1]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Illinois' Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments and opportunity for public hearing.

SUMMARY: On August 19, 1998, the State of Illinois submitted a partial application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). On April 16, 1999, Illinois submitted supplemental application materials for self-certification for interim approval. This notice announces the receipt of Illinois' application, provides a 45–day public comment period, and provides an opportunity to request a public hearing on the application. Illinois has provided a certification that its program meets the requirements for interim approval of a State program under TSCA section 404 for a period of time up to 3 years. Therefore, pursuant to TSCA section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which time a notice will be issued in the **Federal Register** and the Federal program will take effect in Illinois.

DATES: Comments on the authorization application must be received on or before October 18, 1999. Public hearing requests must be received on or before September 16, 1999.

ADDRESSES: Submit all written comments and/or requests for a public hearing identified by docket number PB–402404–IL (in duplicate) to: Environmental Protection Agency, Region V, DT-8J, 77 West Jackson Blvd., Chicago, IL 60604. Comments, data, and requests for a public hearing may also be submitted electronically to: turpin.david@epamail.epa.gov. Follow the instructions under Unit IV. of this document. No information claimed to be Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Marlyse Wiebenga, Project Officer, Environmental Protection Agency, Region V, DT–8J, 77 West Jackson Blvd., Chicago, IL 60604. Telephone: (312) 886–4437.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102-550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681-92), entitled ''Lead Exposure Reduction.''

Section 402 of TSCA authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA, EPA is to establish the Federal program in any State or Tribal Nation that does not have its own authorized program in place by August 31, 1998. States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed

requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized until such time as EPA disapproves the program application or withdraws the program authorization.

Illinois has provided a self-certification letter stating that its program meets the requirements for authorization of a State program under section 404 of TSCA and has requested interim approval of the compliance and enforcement program portion of the Illinois Lead Program. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission (i.e., April 16, 1999). If EPA finds that the program does not meet the requirements for interim authorization of a State program, EPA will disapprove the program application, issue a notice in the **Federal Register**, and establish a Federal program in Illinois.

Section 404(b) of TSCA provides that EPA may approve a program application only after providing notice and an opportunity for a public hearing on the application. Therefore, by this notice EPA is soliciting public comment on whether Illinois' application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. EPA's final decision on the application will be published in the **Federal Register**.

II. State Program Description Summary

The following summary of Illinois' proposed program has been provided by the applicant.

The State of Illinois Department of Public Health (the Department) implements the Lead Poisoning Prevention Act (Act), 410 Illinois Consolidated Statutes 45/1-17, and the Lead Poisoning Prevention Code (Code), 77 Illinois Administrative Code (IAC) section 845, promulgated pursuant to the Act, in order to carry out lead abatement programs that are designed to diminish the incidence of lead intoxication. The primary goal of the Department's Lead Abatement Program is to protect the public's health, safety, and environment by identifying lead-bearing substances which may be the source of exposure of lead to children, and to assure that lead hazards are managed, mitigated, or abated through the administration and enforcement of the Act and the Code, originally passed in 1973 and 1976 respectively, were last amended in August 1998. The Act enabled the Department to require provisions for licensing individuals and firms engaged in lead abatement activities, approving training course providers, and establishing appropriate work practice standards in accordance with the Federal model State plan for lead.

Individuals seeking licensure by the State of Illinois in the lead abatement industry as a worker, contractor/supervisor, inspector, or risk assessor must first make application to the Department. The application requires proof that the individual has successfully completed an appropriate lead training course. The course (and the course provider) chosen by the applicant, must be one that is approved by the Department and provides training comparable to 40 CFR 745.225 as required by section 845.28 of the Code, 77 IAC section 845.28. All lead licenses expire annually. Application for renewal includes the successful completion of an approved refresher course that is specific to the lead abatement field of interest every 3 years. Individuals or firms can also apply for a lead abatement contractor's license. This requires proof that: the applicant holds a certificate of financial responsibility in the form of liability insurance, letter of credit, or a bond for at least $250,000 that specifically covers lead work; the applicant has written standard operating procedures which include medical monitoring and a respirator training program specified in the OSHA regulations (which are incorporated by reference in section 845.12 of the Code); the applicant provides a detailed description of all legal proceedings or claims concerning any lead mitigation activities filed against the applicant; and the applicant agrees to notify the Department before beginning any lead abatement project, as required by the Code. Although contractor applicants are not required to take a lead abatement course, they need to assure the Department that all lead abatement workers will have a valid Illinois lead worker license, and that at least one supervisor will have a valid Illinois contractor/supervisor license. The supervisor must oversee the project and be on site during the entire project. A contractor's license must be renewed annually. Reciprocity requests for any lead licenses from any State or Tribe may be submitted for review. If upon review of the applicant's application it is determined that the licensing State's lead program is at least as protective as the Illinois program, the Department will issue an appropriate license. Lists of all people conducting licensed lead abatement activities are maintained by the Department and are available to the public upon request.

Training course providers seeking approval from the State of Illinois for initial and refresher courses for lead worker, contractor/supervisor, inspector, and risk assessor disciplines must first make application to the Department. The application packet includes a checklist of materials to be submitted along with other requirements that must be satisfied before approval can be granted. All approvals are renewed annually. Audits of courses are completed by Department staff, and the training course provider is notified as to the results of the audit, the deficiencies observed, and whether or not the course was determined to be satisfactory or not satisfactory. Training courses found not satisfactory are issued a notice to correct the deficiencies together with a written explanation of the items that the Department expects the provider to correct before the next training course is scheduled. A list of approved training course providers is maintained by the Department and is available to the public. Illinois does not require a licensed project designer as yet. However, additional requirements are part of the supervisor training to prepare them for large-scale lead abatement projects as cited in 40 CFR 745.225(d)(4). The Department has statutory authority to adopt rules for lead-based paint activities in public and commercial buildings. Where EPA provides guidance under 40 CFR 745.230, the Department will establish rules which will govern such activities as necessary to maintain authorization.

Work practice standards are established in the Code and in the policies and procedures of the Department. The Department has incorporated, at section 845.12(a)(2) of the Code, the Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995) to enhance the work and performance standards throughout the Code. All inspections and risk assessments are completed only by individuals holding an appropriate inspector or risk assessor license issued by the Department. Inspections and risk assessments are to be performed per the incorporated HUD guidelines. Lead abatement activities are performed only

by individuals or firms who hold the appropriate license issued by the Department. Mitigation and abatement activities which involve the destruction or disturbance of any leaded surface is the responsibility of the licensed lead abatement contractor. The contractor has the responsibility to utilize documented methodologies and state of the art procedures that ensure that the work is performed effectively and in a manner that promotes occupant protection and worker safety.

Complaint investigations, inspections, course audits and enforcement activities are accomplished by the Department's staff located in the Central and Regional Offices and through county delegate agencies. Central Office staff provide for the licensing of people who conduct all lead-based paint activities in the State. One administrative assistant, one office administrator and three office associates conduct the licensing portion of the program with one office associate dedicated to the Illinois Third Party Examination process. The third party examination is administered by the Department's Training Manager. A lead program staff person conducts reviews of ongoing program matters and also serves as the Department's Radiation Safety Officer. A public service administrator began program manager duties August 1, 1998, and will be directly responsible for the day-to-day lead program activities as well as the revision of the Department's policies to maintain state of the art procedures. Eight regional staff conduct inspections on a daily basis as well as 90 licensed risk assessors who work within the lead program as the Department's delegate agents under contract to perform the necessary inspections and investigations in their county or municipality to determine the source of environmental lead hazards. Overall program direction is covered by a senior public service administrator in the central office. Funding is established through a mandate that provides a dedicated State fund for the lead program. Revenue from licensing and training course provider's fees are also directed to that fund. The Department's policy and procedure manual provides protocol to achieve all the necessary aspects of the Illinois Lead Poisoning Prevention Program. In it, details of activities to be implemented, standard enforcement procedures with examples of all required letters may be found. Enforcement is accomplished through administrative procedures which have been referenced in the Act under section 410 ILCS 45/13.1 and in the Code. Violations of the Act subject the violator to a Class A misdemeanor. Each day the violation occurs may subject the violator to a $1,000 fine, as well as incarceration in the county jail for 6 months.

The Department participated in Environmental Justice grants from EPA to provide education and information to people who would not receive information about the hazards of lead through normal media. Not-for-profit associations are provided grant dollars to seek out parents of children who are likely to be exposed to lead and may not be aware of lead hazards or what to do to prevent lead poisoning. Additionally, the Department or its agents provide consultative services and screen all appropriate citizens of Illinois for lead poisoning.

III. Issues Upon Which EPA Requests Public Comment

EPA requests comment on whether Illinois' application meets all statutory and regulatory requirements for EPA approval. EPA especially solicits comments on whether and how Illinois' environmental audit privilege statute, (415 Illinois Compiled Statutes 5/52.2), affects Illinois' ability to meet the pertinent requirements.

IV. Federal Overfiling

TSCA section 404(b), makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

V. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established under docket control number PB–402404–IL. Copies of this notice, the State of Illinois' authorization application, and all comments received on the application are available for inspection in the Region V office, from 8:30 a.m. to 5 p.m., Monday through Friday, excluding legal holidays. The docket is located at the Toxics Program Section, Environmental Protection Agency, Region V, 8th floor, 77 West Jackson Blvd., Chicago, IL.

Commenters are encouraged to structure their comments so as not to contain information for which Confidential Business Information (CBI) claims would be made. However, any information claimed as CBI must be marked ''confidential,'' ''CBI,'' or with some other appropriate designation, and a commenter submitting such information must also prepare a nonconfidential version (in duplicate) that can be placed in the public record. Any information so marked will be handled in accordance with the procedures contained in 40 CFR part 2. Comments and information not claimed as CBI at the time of submission will be placed in the public record. Electronic comments can be sent directly to EPA at: turpin.david@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number PB–402404–IL. Electronic comments on this document may be filed online at many Federal Depository Libraries. Information claimed as CBI should not be submitted electronically.

VI. Regulatory Assessment Requirements

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), the Congressional Review Act (5 U.S.C. 801 *et seq.*), Executive Order 12866 (''Regulatory Planning and Review,'' 58 FR 51735, October 4, 1993), and Executive Order 13045 (''Protection of Children from Environmental Health Risks and Safety Risks,'' 62 FR 1985, April 23, 1997), do not apply to this action. In addition, this action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531-1538) or Executive Order 12875 (''Enhancing the Intergovernmental Partnership,'' 58 FR 58093, October 28, 1993). Finally, this action does not contain any information collection requirements and therefore does not require review or approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

A. Executive Order 12875

Under Executive Order 12875, entitled ''Enhancing Intergovernmental Partnerships'' (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must

provide to the Office of Management and Budget (OMB) a description of the extent of EPA's prior consultation with representatives of affected State, local, and Tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

B. Executive Order 13084

Under Executive Order 13084, entitled ''Consultation and Coordination with Indian Tribal Governments'' (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Authority: 15 U.S.C. 2682, 2684.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: July 13, 1999.

David A. Ullrich,

Acting Regional Administrator, Region V.

[FR Doc. 99–22748 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

August 25, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 1, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0009.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License.

Form No.: FCC Form 316.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal governments.

Number of Respondents: 2,700.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 2,700 hours.

Total Annual Cost: $1,594,000.

Needs and Uses: The FCC Form 316 is required when applying for authority for a voluntary/involuntary assignment of a broadcast license or construction permit or transfer of control of corporation holding broadcast license or construction permit.

With adoption of the Report and Order contained in MM Docket No. 94–150, 92–51 and 87–154 on August 5, 1999, the Commission has revised its broadcast ownership attribution rules. The attribution rules define what constitutes a ''cognizable interest'' for purposes of applying the ownership rules. In the Report and Order, the Commission adopted (1) an equity/debt plus attribution rule that would narrow, but not eliminate, the current exemptions from attribution for nonvoting stock and debt, as well as the single majority shareholder exemption; (2) attribute certain television local market agreements (LMA) and modify the radio LMA rules; (3) retain the 5% voting stock benchmark, but raise the passive investor voting stock benchmark to 20%; (4) eliminate the cross-interest policy; and (5) attribute limited liability companies and other new business forms under the same attribution rules that apply to limited partnerships.

The FCC Form 316 has been revised to reflect the rules adopted in the Report and Order. There will be an increase in burden on respondents to provide the new information.

The data is used by FCC staff to determine if the applicant is qualified to become a Commission licensee or permittee of a commercial or noncommercial broadcast station and to carry out the provisions of Section 310(d) of the Communications Act of 1934, as amended.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 99–22724 Filed 8–31–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 94–102; DA 99–1627]

Request for Comment on Wireless E911 Report

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document solicits comment on a report filed by the Association of Public-Safety Communications Officials International, Inc., Cellular Telecommunications Industry Association, National Association of State Nine-One-One Administrators, and National Emergency Number Association, regarding issues, particularly issues pertaining to cost recovery mechanisms and choice of Phase I transmission technologies, that may be delaying implementation of Phase I of the Commission's program to improve wireless E911 service. This action is taken to ensure that all Commission decisions regarding wireless E911 are based on the most complete and accurate information possible, and to ensure that optimum wireless E911 service is achieved as soon as possible.

DATES: Comments are due on or before September 14, 1999.

ADDRESSES: Office of the Secretary, Federal Communications Commission, Washington, DC 20554

FOR FURTHER INFORMATION CONTACT: Barbara Reideler, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice in CC Docket 94–102, DA 99–1627, Released August 16, 1999. The complete text of the Public Notice is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW, Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), (202) 857–3800, CY–B400, 445 12th Street, SW, Washington, DC.

Filing Schedule and Procedural Matters

1. Comments must be filed by September 14, 1999. Parties should reference CC Docket No. 94–102 in their comments. Parties may obtain the report and the comments in this Public Notice at the FCC website, <http://www.fcc.gov/e-file/ecfs.html>. The report and comments are available for public inspection and copying in the Reference Center, 445 12th St., SW, Washington, DC 20554. Copies of the report and comments also are available from ITS, at (202) 857–3800, CY–B400, 445 12th Street, SW, Washington, DC.

2. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, including ''get form <your e-mail address>'' in the body of the message. A sample form and directions will be sent in reply.

3. Interested parties who choose to file by paper must file an original and four copies of their comments with the Office of the Secretary, Federal Communications Commission, 445 Twelfth St., SW, Room TW–A325, Washington, DC 20554. In addition, parties should send two copies to Barbara Reideler, Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 Twelfth St., SW, Washington, DC 20554, and one copy to 900, 445 12th Street, SW, Washington, DC 20554.

4. This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200(a), and 1.1206. Persons making *ex parte* presentations on an oral basis are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a two-sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's Rules, 47 CFR 1.1206(b).

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 99–22723 Filed 8–31–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2357]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

August 26, 1999.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by September 16, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them (PR Docket No. 92–235).

and

Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services.

Number of Petitions Filed: 7

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 99–22726 Filed 8–31–99; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the

general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled ''Customer Assistance.''

DATES: Comments must be submitted on or before November 1, 1999.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room 4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. All comments should refer to ''Customer Assistance.'' Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to add the following collection of information:

Title: Customer Assistance.

OMB Number: new collection.

Frequency of Response: Occasional.

Affected Public: Customers of financial institutions who may have inquiries or complaints.

Estimated Number of Respondents: 5,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden: 2,500 hours.

General Description of Collection: This collection permits the FDIC to collect information from customers of financial institutions who have inquiries or complaints about service. Customers may document their complaints or inquiries to the FDIC using a letter or on an optional form.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 25th day of August, 1999.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–22691 Filed 8–31–99; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency is submitting a request for review and approval of an expired information collection. The request is submitted under the emergency processing procedures in Office of Management and Budget (OMB) regulation 5 CFR 1320.13. FEMA is requesting that this information collection be approved by August 25, 1999, for use through February 2000.

FEMA plans to follow this emergency request with a request for a 3-year approval. The request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. To help us with the timely processing of the emergency and normal clearance submissions to OMB, FEMA invites the general public to comment on the proposed collection of information. This notice and request for comments is in accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). It also seeks comments concerning the Federal Insurance Administration's Cover America II Advertising campaign to conduct market research.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) was created by Congress in 1968 and is administered by the Federal Emergency Management Agency (FEMA). The Federal Insurance Administration (FIA) is specifically responsible for, among other things, the marketing of the NFIP. In response to the FEMA Director's goal that the FIA increase the number of people covered with flood insurance by 20 percent in two years, the FIA initiated ''Cover America'' a major, multi-year, multi-million dollar marketing and advertising campaign designed to increase the number of homes and businesses covered by flood insurance. The NFIP does not actually ''sell'' flood insurance to consumers. Under an arrangement with the FIA, private insurance companies and their agents sell and service the vast majority of the NFIP policies. Agents write the remainder directly with the Government through a servicing agent.

Collection of Information

Title. The Federal Emergency Management Agency/Federal Insurance Administration's Cover America II Project.

Type of Information Collection. Reinstatement with changes.

OMB Number: 3067–0267.

Form Numbers. Not Applicable.

Abstract. FEMA/FIA will conduct research with consumers, business-owners and insurance agents to plan, implement and evaluate a nationwide campaign to increase awareness of the NFIP and flood insurance, improve attitudes about the NFIP and flood insurance, and increase flood insurance sales.

Affected Public: Individuals or households, Business or other for-profit and not for-profit institutions.

ESTIMATED TOTAL ANNUAL BURDEN HOURS.

FY 2000	Number of respondents	Response frequency	Burden per respondent	Total burden hours
Tracking Study (twice a year)	1,200 consumers 300 agents (3,000 total)	1	25 minutes	1000 consumers 250 agents.
Consumer Satisfaction Study (once a year)	900 consumers 300 agents (1,200 total)	1	20 minutes	300 consumers 100 agents.
Stage I (Focus Groups) Advertising Development among Consumers.	130	1	2 hours	260 consumers.
Stage II Evaluating Agent Advertising	200	1	15 minutes	50 Agents.
Lender Survey (twice a year)	300 (600 total)	1	20 minutes	200 lenders.
Radio Test (four markets)	200 (800 total)	1	5 minutes	68 consumers.
Satisfaction Study with Co-op Insurance Agents.	700	1	10 minutes	117 agents.
Total	6,630	1	N/A	2,345 (1,628 Consumers, 517 Agents, 200 Lenders)

Estimated Cost. The total estimated costs to the Government would be approximately $481,150 per year with an expected 5–10% increase annually.

Comments

Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Submit comments to OMB within 30 days of the date of this notice. FEMA will, however, continue to accept comments for 60 days from the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625, FAX number (202) 646–3524, email: muriel.anderson@fema.gov.

FOR FURTHER INFORMATION CONTACT: Contact Carolyn D. Goss, Management Analyst, Federal Insurance Administration, 202–646–3468 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: August 17, 1999.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–22511 Filed 8–31–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

National Flood Insurance Program (NFIP); Interim Procedure for Letter of Map Revision Based on Fill Requests

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of interim procedures.

SUMMARY: We, FEMA, give notice of interim procedures for issuing Letters of Map Revision Based on Fill (also referred to as LOMR–Fs). We use criteria established in our regulations to determine whether we can issue a LOMR-F to remove unimproved land or land with structures from the Special Flood Hazard Area (SFHA) by raising ground elevations using engineered earthen fill.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Technical Services Division, Mitigation Directorate, at (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION:

Background

Congress created the National Flood Insurance Program (NFIP) in 1968 to provide federally supported flood insurance coverage, which generally had not been available through private insurance companies. The program is based on an agreement between the Federal Government and each flood-prone community that chooses to participate in the program. FEMA makes flood insurance available to property owners within a community provided that the community adopts and enforces floodplain management regulations that meet or exceed the minimum requirements of the NFIP set forth in Part 60 of the NFIP Floodplain Management Regulations (44 CFR Part 60).

Identifying and mapping flood hazards. FEMA identifies and maps flood hazard areas in each community by conducting flood hazard studies and publishing Flood Insurance Rate Maps (FIRMs). These flood hazard areas, referred to as Special Flood Hazard Areas (SFHAs), are based on a flood that would have a 1-percent chance of being equaled or exceeded in any given year (the 100-year flood or base flood). The 1-percent annual chance flood, shown on the FIRMs as Zone A or Zone V, is determined from information obtained through consultation with the community, floodplain topographic surveys, and detailed hydrologic and hydraulic analyses.

Floodplain management requirements. The NFIP minimum building and development regulations require that new or substantially improved structures in A Zones must have their lowest floors (including

basement) elevated to or above the Base Flood Elevation (BFE) (the elevation of the 1-percent annual chance flood). Non-residential structures in A Zones can either be dry floodproofed or elevated to the BFE. In V Zones, the bottom of the lowest horizontal structural member of the lowest floor of all new or substantially improved structures must be elevated to or above the BFE. The NFIP floodplain management requirements at 44 CFR 60.3 are designed to protect structures constructed in floodplains from flood damages and are the basis for actuarial flood insurance rating. For floodplain management and for flood insurance coverage purposes we define the term ''structure'' in 44 CFR 59.1.

Flood insurance. The National Flood Insurance Act of 1968, as amended requires that FEMA charge full actuarial rates reflecting the complete flood risk to structures built or substantially improved on or after the effective date of the initial FIRM for the community or after December 31, 1974, whichever is later, so that the risks associated with structures in flood prone areas are borne by those located in such areas and not by the taxpayers at large. These structures are referred to as Post-FIRM. The NFIP flood insurance rates for new construction are based on the degree of the flood risk reflected by the flood risk zone on the FIRM. Flood insurance rates also take into account a number of other factors including the elevation of the lowest floor above or below the BFE, type of structure, and the existence of a basement or an enclosure.

Mandatory purchase of insurance. The Flood Disaster Protection Act of 1973 and the National Flood Insurance Reform Act of 1994 mandate the purchase of flood insurance as a condition of Federal or federally-related financial assistance for acquisition or construction of structures in SFHAs of any community. The Acts prohibit Federal agency lenders, such as the Small Business Administration, United States Department of Agriculture's Rural Housing Service, and Government-Sponsored Enterprises for Housing (Freddie Mac and Fannie Mae) from making, increasing, guaranteeing, or purchasing a loan secured by improved real estate or mobile home(s) in an SFHA, unless flood insurance has been purchased and maintained during the term of the loan. The Acts also prohibit federally-regulated lenders from making, increasing, extending, or renewing any loan secured by improved real estate located in the SFHA in a participating community unless the secured property and any personal property securing the loan is covered by flood insurance. The prohibition of financial assistance also applies to non-participating communities.

Need for Interim Procedures

We revise NFIP flood maps for a number of reasons, such as the availability of improved techniques for assessing the flood risk, changes in the physical condition of the floodplain or watershed, or as additional data become available to improve the identification of flood hazards. The requirements for revising the FIRMs are established in the NFIP Regulations at 44 CFR Part 65, Identification and Mapping of Special Hazard Areas. FEMA can also revise a FIRM when property owners, whose land is in an SFHA and the elevation is below the BFE, request a map change as a result of grading and filling their site to raise the level of the land above the 1-percent annual chance flood level. The criteria for determining whether to remove unimproved land or land with structures from the SFHA by raising ground elevations using engineered earthen fill are established in § 65.5. If the criteria under § 65.5 are met, we will issue a Letter of Map Revision Based on Fill (also referred to as a LOMR–F).

Specifically, unimproved land (land without a structure) can be removed from the SFHA under 44 CFR 65.5(a)(3) if the ground elevations of the entire legally defined parcel of land are at or above the BFE. Land that is removed under paragraph 65.5(a)(3) is no longer subject to the NFIP floodplain management requirements at 44 CFR 60.3, which includes the requirement that the lowest floor (including basement) be elevated to or above the BFE. In addition, future structures placed on this unimproved land would not be subject to the mandatory flood insurance purchase requirement of the NFIP.

If a structure is involved, we will determine whether a structure is to be removed from the SFHA under 44 CFR 65.5(a)(4) by comparing the elevation of the lowest floor (including basement) and the elevation of the lowest adjacent grade with the BFE. If the entire structure and the lowest adjacent grade are at or above the BFE, the structure may be removed from the SFHA. Once we issue a LOMR–F, the NFIP floodplain management requirements at 44 CFR 60.3 and the mandatory flood insurance purchase requirement of the NFIP no longer apply. However, if the structure involved does not meet the criteria that the entire structure and the lowest adjacent grade are at or above the BFE, the structure is not removed from the SFHA and the structure is still subject to the NFIP floodplain management requirements and the mandatory flood insurance purchase requirement.

When requesting a LOMR–F, property owners are required to submit adequate supporting data according to the criteria established in § 65.5, such as a legal description of the property and information regarding the placement of fill. In addition, a community must be made aware of a request for a LOMR–F because changes in land elevations may impact other property owners. Community acknowledgement of a request for a LOMR–F confirms that the community has reviewed the LOMR–F request and found that it meets all of the community's applicable floodplain management regulations, including the requirement that no fill be placed in the regulatory floodway.

There has been considerable confusion over the provision under which a LOMR–F request will be processed [paragraph 65.5(a)(3) or paragraph 65.5(a)(4)]. At issue is what constitutes ''if a structure is involved'' that subjects the LOMR–F request to the elevation requirements of paragraph 65.5(a)(4). We are providing these interim procedures to clarify when we will process a LOMR–F request under paragraph 65.5(a)(3) and when we will process a LOMR–F request under paragraph 65.5(a)(4).

We also recognize the possible inconsistent treatment of structures for LOMR–F requests processed under 65.5(a)(3) or 65.5(a)(4). A structure that is constructed on unimproved land that has been removed from the SFHA under of paragraph 65(a)(3) is not required to meet the NFIP floodplain management design and construction requirements. Whereas, a structure that falls under paragraph 65.5(a)(4) must meet certain requirements to ensure that the lowest floor (including basement) is elevated to or above the BFE before the land and structure are removed from the SFHA.

We are concerned that structures built on land that was previously removed from the SFHA under § 65.5(a)(3) may still be subject to flood damages during the base flood and higher magnitude floods. This risk will vary depending on whether or not the structure has a basement below the BFE, the soil conditions at the site, duration of flooding, and the location of the structure relative to the edge of the SFHA. Therefore, we strongly encourage communities to review permit applications for structures built after a LOMR–F is issued under paragraph 65.5(a)(3) to ensure structures are reasonably protected from flood damages. When a community joins the NFIP, it must initially adopt a resolution

or ordinance that expresses a ''commitment to recognize and evaluate flood hazards in all official actions and to take such other official action as reasonably necessary to carry out the objectives of the program'' [44 CFR 59.22(a)(8)]. This is in addition to the general requirement that the community ''take into account flood hazards to the extent that they are known in all official actions relating to land management and use'' [44 CFR 60.1(c)]. One way communities can ensure that structures are reasonably protected is to require that the lowest floor (including basement) of the structure be elevated to or above the BFE designated for the site prior to issuance of the LOMR–F. Another way communities can ensure that structures are reasonably safe from flooding is to require that saturated soil conditions during a base flood event do not adversely impact structures.

Interim Procedures

We will process all LOMR–F requests received after the date of this notice as follows (these procedures will apply to single and multi-lot LOMR–F requests, which may involve one structure or multiple structures):

- Paragraph 65.5(a)(3) will apply to requests to remove unimproved land elevated by placement of engineered fill if a structure is not involved at the time of the application for a LOMR–F.
- Paragraph 65.5(a)(4) will apply to requests to remove land elevated by placement of engineered fill if a structure is involved at the site at the time of the application for a LOMR–F.
- We base a determination of whether a ''structure is involved'' on the date the building or other floodplain development permit was issued. As part of the community acknowledgement of the LOMR–F request on MT–1 Form 4, the community must indicate (in the comments section) whether a permit has been issued, or the requestor must indicate whether a permit has been issued. If the community has issued a permit, we will consider that a structure is involved and process the LOMR–F request under Paragraph 65.5(a)(4).
- We strongly encourage community officials to review permit applications for structures built after a LOMR–F is issued under paragraph 65.5(a)(3) to minimize flood damages. One way communities can ensure that structures are adequately protected is to require that the lowest floor (including basement) of the structure be elevated to or above the BFE designated for the site prior to issuance of the LOMR–F.
- We will not actively review previously issued determinations under § 65.5 for conformity with these interim procedures. We will, however, review previously denied applications for a LOMR–F processed under paragraph 65.5(a)(4) upon written request. Such requests must include documentation on the date of ''start of construction'' for any structures located on the legally defined parcel that was the subject of the previously denied application for a LOMR–F.
- New LOMR–F requests and requests for LOMR–F redeterminations will be subject to the current fee schedule established in 44 CFR Part 72.

Future Actions by FEMA

We intend to address the issue of inconsistent treatment of structures under the two provisions for requesting a LOMR–F to remove unimproved land and land with structures from the SFHA. Our objectives are to ensure that flood damages are minimized and that the SFHA is identified in a consistent manner.

Dated: August 20, 1999.

Michael Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–22642 Filed 8–31–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–011528–013.

Title: Japan/United States Eastbound Conference.

Parties: A.P. Moller-Maersk Line, American President Lines, Ltd., Hapag-Lloyd Container Line GmbH, Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha, Orient Overseas Container Line, Inc., P&O Nedlloyd B.V., P&O Nedlloyd Limited, Sea-Land Service, Inc., Wallenius Wilhelmsen Lines AS.

Synopsis: The proposed modification would authorize the conference to reduce or eliminate the amount of funds to be maintained by each member to guarantee faithful performance during the conference suspension period.

Agreement No.: 301–200866–001.

Title: Broward-King Ocean Marine Terminal Agreement.

Parties: Broward County, Bound of County Commissioners, King Ocean Service de Venezuela, S.A.

Synopsis: The proposed amendment extends the term of the agreement through June 14, 2002.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–22800 Filed 8–31–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Future Enterprises, Inc. d/b/a Langham Transport Services, 7136 Zionsville Road, Indianapolis, IN 46268. Officers: John Willman, Director (Qualifying Individual), Cathy Langham, President

Vann F. Keefe, 1510 Talleyrand Avenue, Jacksonville, FL 32206, Sole Proprietor

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants:

Diane Eicher, 12121 Aneta Street, Culver City, CA 90230, Sole Proprietor

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–22799 Filed 8–31–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 15, 1999.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Craig G. Brewster, Butte, Nebraska; to acquire voting shares of Butte State Company, Butte, Nebraska, and thereby indirectly acquire voting shares of Butte State Bank, Butte, Nebraska.

Board of Governors of the Federal Reserve System, August 26, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–22667 Filed 8–31–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 24, 1999.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Provident Financial Group, Inc., Cincinnati, Ohio; to acquire OHSL Financial Corp., Cincinnati, Ohio, and thereby indirectly acquire Oak Hill Savings and Loan Company, Cincinnati, Ohio, and thereby engage in permissible savings association activities, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, August 26, 1999.

Robert dev. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–22668 Filed 8–31–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 16, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wells Fargo & Company, San Francisco, California; Norwest Mortgage, Inc., Des Moines, Iowa; and Southwest Partners, Inc., Des Moines, Iowa; to engage *de novo* through a joint venture, 1st Com Mortgage, Palm Springs, California, in mortgage lending, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, August 27, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–22718 Filed 8–31–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION

ANS No.	Acquiring	Acquired	Entities
		04/26/1999	
90760	B.F. Goodrich Company, (The)	Coltec Industries Inc	Coltec Industries Inc.
92111	Northside Operating Co	Doctors Community Healthcare Corporation.	Doctors Community Healthcare Corporation.
92112	ONEOK, Inc	Koch Industries, Inc	Koch Oklahoma Midstream Processing Company, LLC. Koch Oklahoma Midstream Services Company. Koch Oklahoma Midstream Transmission Company, LLC.
92163	Utilicorp United, Inc	Western Gas Resources, Inc	Western Gas Resources Storage, Inc.
92173	Steelcase Inc	Lee Pierce	Lee Pierce Holdings, Inc.
92176	GS Capital Partners II, L.P	H. Peter Claussen and Linda C. Claussen.	Gulf & Ohio Railways, Inc. The Seven Islands Foundation, Inc.
92199	Kellstrom Industries, Inc	R. Dean Stickler	Certified Aircraft parts, Inc.
92200	Kellstrom Industries, Inc	Donald Marshall	Certified Aircraft parts, Inc.
92221	BellSouth Corporation	Champion International Corporation	Champion International Corporation.
92247	J.W. Childs Equity Partners, L.P	Quality Future, Inc	Quality Stores, Inc.
92248	Quality Future, Inc	J.W. Childs Equity Partners, L.P	CT Holding, Inc.
92273	Quilvest American Equity Ltd	ATSCO Products, Inc	ATSCO Products, Inc.
92300	Weatherford International, Inc	Clearwater Holdings, Inc	ECD/Northwest, Inc.
92301	Interim Services Inc	Norrell Corporation	Norrell Corporation.
92302	Guy W. Millner	Interim Services Inc	Interim Services, Inc.
92319	The Hain Food Groups, Inc	Frontenac VI Limited Partnership	Natural Nutrition Group, Inc.
92323	The Atlantic Foundation	Brio Technology, Inc	Brio Technology, Inc.
92324	Alistar Pilot Fund, LLC	William P. Johnson	Goshen Rubber Companies, Inc.
92326	mobile mini, Inc	The 1997 Jansons Trust	National Security Containers, L.L.C.
92330	American Agricultural Insurance	Nationwide Mutual Insurance Company.	Nationwide Mutual Insurance Company.
92332	Waccamaw Corporation	HomePlace of America, Inc. (debtor in possession).	HomePlace of America, Inc. (debtor in possession).
92334	EFTC Corporation	Honeywell Inc	Honeywell, Inc.
92335	James M. Galef	DLJ Merchant Banking Partner, II,L.P	Insilco Corporation, Romac Metals Division.
92338	Robert M. Beavers, Jr	Campbell Soup Company	Fresh Start Bakeries, Inc.
92339	The Times Mirror Company	Geoffrey A. Robinson	New Mass, Media, Inc.
92340	The Times Mirror Company	G. Christine Austin	New Mass, Media, Inc.
92341	Voting Trust dated December 4, 1968 of Hallmark Cards.	The Picture People, Inc	The Picture People, Inc.
92347	Gerald W. Schwartz	American Buildings Company	American Buildings Company.
92351	Fremont Partners, L.P	Juno Lighting, Inc	Juno Lighting, Inc.
92353	Philadelphia Consolidated Holding Corp.	The Jerger Company, Inc	The Jerger Company, Inc.
92355	U.S. Concrete, Inc	Central Concrete Supply Co., Inc	Central Concrete Supply Co., Inc.
92356	Fluoroware, Inc. Employee Stock Ownership Plan.	Estate of Wayne C. Bongard	Empak, Inc.
92357	Estate of Wayne C. Bongard	Fluoroware, Inc. Employee Stock Ownership Plan.	Fluoroware, Inc. Employee Stock Ownership Plan.
92361	Roger S. Penske	United Auto Group, Inc	United Auto Group, Inc.
92363	Barry Diller	The Seagram Company Ltd	OFI Holdings, Inc. PolyGram Holdings, Inc.
92364	Great Lakes Chemical Corporation	Monsanto Company	NSC Technologies Company, LLC.
92370	B III Capital Partners, L.P	Waste Systems International, Inc	Waste Systems International, Inc.
92375	First American Financial Corporation	Donald A. Foss	Teletrack, Inc.
		04/27/1999	
92298	Banque Nationale de Paris S.A	Societe Generale S.A	Societe Generale S.A.
92299	Banque Nationale de Paris S.A	Paribas S.A	Paribas S.A.
92374	Canandaigua Brands, Inc	Bernard Arnault	Moet Hennessy, Inc. Simi Winery, Inc.
92376	J. Norman Estes	John L. Black, Jr	The Waverley Group, Inc.
92379	Samir A. Rehani	LeRoy Luther	Triangle Tool Corporation.
92384	Cisco Systems, Inc	Fibex Systems	Fibex Systems.
92389	BankBoston Corporation	American Business Products, Inc	BookCrafters, USA, Inc.
92391	Meiji-Seika Kaisha, Ltd	Howard Perley and Rona Perley Trustees.	Laguna Cookie Company, Inc.
92393	CoreComm Limited	MeglNet Inc	MeglNet Inc.
92395	Golder, Thoma, Cressey, Rauner Fund V, LP.	Gary W. Sneed	CNP Solutions, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
92396	Young & Rubicam Inc	KnowledgeBase Marketing, Inc	KnowledgeBase Marketing, Inc.
92400	Warburg, Pincus Equity Partners, L.P	Judith C. Inglis	American Show Management, Inc.
92401	Warburg, Pincus Equity Partners, L.P	John R. Inglis	American Show Management, Inc.
92404	Group Maintenance America Corp	C.A. Solinger	Cardinal Contracting Corporation.
92416	Lennox International Inc	Bernard J. Wallis	Livernois Engineering Holding Company.
92428	Health Management Associates, Inc	Community Hospital of Lancaster Foundation.	Community Hospital of Lancaster.
		04/28/1999	
92304	MAN Aktiengesellschaft	Mannesmann AG	Mannesmann Demag Corporation.
92305	Siemag Weiss Stiftung & Co. KG	Mannesmann AG	Mannesmann Demag Corporation.
92321	Clear Channel Communications, Inc	Alvis E. Owens, Jr	Owens Broadcasting Co., L.L.C. OwensMAC Radio, L.L.C.
92322	Clear Channel Communications, Inc	MAC America Communications, Inc	OwensMAC Radio, L.L.C.
92377	Omnicorm Group Inc	Jordan Zimmerman	Zimmerman & Partners Advertising, Inc.
92381	Volex Group p.l.c	Belden Inc	Belden Wire & Cable Company.
92390	Solutia Inc	Akzo Nobel NV	CPFilms, Inc.
92397	Ion Beam Applications S.A	Griffith Laboratories, Inc	Griffith Micro Science.
92403	Houghton Mifflin Company	G. Warren Schloat, III	Sunburst Communications, Inc.
92406	Brentwood Associates Buyout Fund II, L.P.	CNF Transportation Inc	VantageParts.
92423	Cisco Systems, Inc	Sentient Networks, Inc	Sentient Networks, Inc.
92430	Jackson Products, Inc	Morton International, Inc	Morton International, Inc.
		04/29/1999	
92179	John J. Rigas	Frontier Vision Partners, L.P	Frontier Vision Partners, L.P.
92234	HarbourVest Partners V–Direct Fund, L.P.	C. Philip Rainwater	Benchmark Media, Inc.
92236	Alta Communications VII, L.P	C. Philip Rainwater	Benchmark Media, Inc.
92242	University Hospitals Health System, Inc.	Columbia/HCA Healthcare Corporation	Sisters of Charity/St. Augustine & Columbia/HCA Healthcare.
92243	Sisters of Charity of St. Augustine	Columbia/HCA Healthcare Corporation	Sisters of Charity/St. Augustine & Columbia/HCA Healthcare.
92285	John J. Rigas	Entergy Corporation	Entergy Hyperion Telecommunications of Arkansas, LLC. Entergy Hyperion Telecommunciations of Louisiana, LLC. Entergy Hyperion Telecommunications of Louisiana, LLC.
92286	John J. Rigas	John J. Rigas	Entergy Hyperion Telecommunications of Arkansas, LLC. Entergy Hyperion Telecommunications of Louisiana, LLC. Entergy Hyperion Telecommunications of Mississippi, LLC.
92336	Graham Spencer	AT&T Corp	At Home Corporation.
		04/30/1999	
92043	RWE AG	Eagle Pacific Industries, Inc	Eagle Pacific Industries, Inc.
92251	United Surgical Partners International, Inc.	Columbia/HCA Healthcare Corporation	Texas Outpatient Surgical Center, Inc.
92279	Fiskars Corporation	Fineter S.A	Syroco, Inc.
92337	George Bell	AT&T Corp	At Home Corporation.
92352	MagneTek, Inc	Richard L. Pratt	Electric Motor Systems, Inc. Electromotive Systems, Inc. EMS/Rose Automation Engineering, Inc.
92378	EMCOR Group, Inc	Energy Systems Industries, Inc	Energy Systems Industries, Inc.
92392	Acosta-PMI, Inc	Kelley-Clarke, Inc	Kelley-Clarke, Inc.
92415	New England Electric System	Eastern Utilities Associates	Eastern Utilities Associates.
92432	Fortis (B)	American Bankers Insurance Group, Inc.	American Bankers Insurance Group, Inc.
92439	Tekelec	Leslie K. Wagner and Harvey Wagner (spouses).	IEX Corporation.
92442	Cypress Merchant Banking Partners L.P.	Harvey Ball	Liberty Electrical Supply, Co., Inc.
92445	Barry Diller	Robert Diener	TMF, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
92446	Barry Diller	David Litman	TMF, Inc.
92450	Pan American Hospital Corporation	United HealthCare Corporation	CAC Medical Center, Inc. United HealthCare Services, Inc.
92451	Welsh, Carson, Anderson & Stowe VIII, L.P.	Colonial Acquisition Corp	Colonial Acquisition Corp.
92453	General Electric Company	Philip A. Belyew	Transit Group, Inc.
92460	Health Care Capital Partners, L.P	Colonial Acquisition Corp	Colonial Acquisition Corp.
92471	Quanta Services, Inc	Harold L. Chapman, Jr	H. L. Chapman Leasing Co. H. L. Chapman Pipeline Construction, Inc. Sullivan Welding, Inc.
92473	Harold L. Chapman, Jr	Quanta Services, Inc	Quanta Services, Inc.
	05/04/1999		
92435	PepsiCo, Inc	The Pepsi Bottling Group, Inc	Pepsi-Cola Metropolitan Bottling Company, Inc.
92436	The Pepsi Bottling Group, Inc	PepsiCo, Inc	Bottling Group, LLC.
92448	Inverness/ Phoenix Partners LP	Trico Marine Services, Inc	Trico Marine Services, Inc.
	05/05/1999		
92213	Triumph Group, Inc	Leona M. Scruggs	Ralee Engineering Company.
92284	Omnicare, Inc	Forrest L. Preston	Life Care Pharmacy Services, Inc.
92402	SierraPine Limited	Weyerhaeuser Company	Weyerhaeuser Company.
92418	Anglo American Corporation of South Africa Ltd.	Minorco S.A	Minorco S.A.
92422	Bell Atlantic Corporation	Bell Atlantic Corporation	Hudson Valley RSA Cellular Partnership.
92425	FirstEnergy Corp	GPU, Inc	Pennsylvania Electric Company.
92426	Quanta Services, Inc	Stephen Bauchman	Bonneville Construction Co., Incorporated.
92427	Niagara Corporation	Glynwed International plc	Glynwed Steels Limited.
92429	NCO Group, Inc	H.I.G. Investment Group, L.P	DCI Holding, Inc.
92431	Cablevision Systems Corporation	AT&T Corp	At Home Corporation.
92443	GTCR Fund VI, L.P	National City Corporation	National Processing Company. NPC Check Services, Inc.
92452	Welsh, Carson, Anderson & Stowe VIII, L.P.	Concentra Managed Care, Inc	Concentra Managed Care, Inc.
92456	TeleCorp PCS, Inc	AT&T Corp	AT&T Wireless PCS Inc.
92462	Doug Greene	Penton Media, Inc	Penton Media, Inc.
92463	Penton Media, Inc	Doug Greene	New Hope Communications, Inc.
	05/07/1999		
91027	Fox Paine Capital Fund, L.P	ATU Communications, Inc	ATU Communications, Inc.
92291	BEC Energy	Commonwealth Energy System	Commonwealth Energy System.
92292	Commonwealth Energy System	BEC Energy	BEC Energy.
92394	Cadbury Schweppes plc	The Procter & Gamble Company	Hawaiian Punch Assets.
92417	GS Capital Partners II, L.P	Niagara Mohawk Holdings, Inc	Niagara Mohawk Power Corporation.
92440	PIA Merchandising Services, Inc	Robert G. Brown	SPAR Acquisition, Inc.
92447	Professionals Group, Inc	Professionals Group, Inc	MEEMIC Holdings, Inc.
92458	AmericaWest Holdings Corporation	Candant Corporation	National Leisure Group, Inc.
92467	OCM Fund II	Aureal Semiconductor Inc	Aureal Semiconductor Inc.
92470	Glencore Holding AG	Columbia Falls Aluminum Company	Columbia Falls Aluminum Company.
92472	Franco Manufacturing Co. Inc	Sara Lee Corporation	Sara Lee Corporation.
92474	Wand Equity Portfolio II L.P	Foster & Gallagher, Inc	The Popcorn Factory, Inc.
92475	D & K Healthcare Resources, Inc	Harvey C. Jewett, IV	Jewett Drug Co., Inc.
92476	Time Warner Inc	Barry Silverstein	MetroComm AxS, L.P.
92477	Newbridge Networks Corporation	TeleHub Communications Corporation	TERAbridge Technologies Corporation.
92480	Harte-Hanks, Inc	Kenneth J. Boone	Direct Marketing Associates, Inc.
92481	General Electric Company	H.I.G. Investment Group, L.P	H.I.G. Vinyl, Inc.
92484	Charles H. Bundrant	Nichirei Corporation	Nichirei Foods America, Inc.
92485	Science Applications International Corporation.	Broadway & Seymour, Inc	Broadway & Seymour, Inc.
92487	SOFTBANK Corp	E-Loan, Inc	E-Loan, Inc.
92489	WICOR, Inc	Herbert Lipner	Omni Corporation.
92490	Toymax International, Inc	Charles D. Burkett, Jr. and Roberta M. Burkett.	Monogram International, Inc. Monogram Products (HK) Limited.
92491	True North Communications Inc	Robert C. and Jo Anne Hacker	The Hacker Group, Ltd.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
92495	Raymond James Financial, Inc	Bank One Corporation	Roney & Co., L.L.C.
92503	Group 1 Automotive, Inc	Gene Messer Ford of Amarillo, Inc	Gene Messer Ford of Amarillo, Inc.
92504	Group 1 Automotive, Inc	Gene Messer Ford, Inc	Messer Lubbock Dealership.
92506	Paul G. Allen	StadiaNet Sports, Inc	StadiaNet Sports, Inc.
92513	MedQuist, Inc	Harris Corporation	Lanier Professional Services, Inc.
92519	Plexus Corp	SeaMED Corporation	SeaMED Corporation.
92521	Amazon.com, Inc	e-Miche Incorporated	e-Miche Incorporated.
92522	President and Fellow of Harvard College.	The J.H. Heafner Company, Inc	The J.H. Heafner Company, Inc.
92523	Christopher Goldsbury, Jr	Wal-Mart Stores, Inc	McLane Foods, Inc.
92525	Ronald W. Burkle	Alliance Entertainment Corp	Alliance Entertainment Corp.
92528	Becton, Dickinson and Company	Kenneth S. Fong	Clontech Laboratories, Inc.
92529	Kenneth S. Fong	Becton, Dickinson and Company	Becton, Dickinson and Company.
92530	Fiserv, Inc	JWGenesis Financial Corp	JWGenesis Cleaning Corp.
92537	Group 1 Automotive, Inc	Robert C. Sansing	Avalon Nissan, Inc. Heritage Advertising, Inc. Sandy Sansing Chevrolet, Inc. Sandy Sansing Imports, Inc. Sandy Sansing Nissan, Inc. Southern Chevrolet-Olds-Geo, Inc.
92539	J. Baker, Inc	Edison Brothers Stores, Inc. (debtor-in-possession).	Edison Brothers Stores, Inc.
92543	E. Thomas Martin	DSI Toys, Inc	DSI Toys, Inc.
92549	Temple-Inland Inc	Fidelity Funding Financial Group, Inc	Fidelity Funding Acceptance. Fidelity Funding, Inc., Fidelity Funding of California, Inc.
92567	Windward Capital Partners II, L.P	Anacomp, Inc	Anacomp, Inc./Anacomp Limited.
92571	Stonington Capital Appreciation 1994 Fund, L.P..	Pasquale J. Santangelo	Lincoln Technical Institute Inc.
92576	Future Publishing Holdings Limited	Chris Anderson	Imagine Media, Inc.
92585	Credit Suisse Group	Arch Communications Group, Inc	Arch Communicatoins Group, Inc.
92588	Citigroup Inc	CORT Business Services Corporation	CORT Business Services Corporation.
		05/11/1999	
92420	Minorco S.A	Anglo American Corporation of South Africa Ltd.	Anglo American Corporation of South Africa Ltd.
92441	Safeguard International Fund, L.P	VIAG AG	NF Holding, Inc.
92496	Ripplewood Partners, L.P	Charles T. Meyer, III and Carole Meyer.	Meyer's Bakeries, Inc.
92497	Textron Inc	Lincolnshire Equity Fund, L.P	Energy Mfg. Co., Inc. Williams Machine & Tool Co.
92516	Golder, Thoma, Cressy, Rauner Fund V. LP.	Fluor Corporation	S&R Equipment Co., Inc.
92534	Global Crossing Ltd	Frontier Corporation	Frontier Corporation.
92535	Josephy P. Clayton	Global Crossing Ltd	Global Crossing Ltd.
92538	Francois Pinault	Elf Aquitaine	Sanofi Group.
92546	W.R. Grace & Co	Textron Inc	Textron System Corporation.
92557	Stiftung Hasler Werke	ABB AB	ABB Automation, Inc.
92558	Stiftung Hasler Werke	ABB AG	ABB Automation, Inc.
92560	Snyder Communications, Inc	David F. Kirwan	Broadwell Capital Group, Inc. d/b/a Broadwell Marketing Group, Inc.
92565	Apollo Investment Fun IV, L.P	Rate Medium Group, Inc	Rate Medium Groups, Inc.
92577	Atlantic Equity Partners International II, L.P.	CPI Holding Corporation	CPI Holding Corporation.
		05/12/1999	
92388	Randy M. Long	Tosco Corporation	Tosco Corporation.
92493	Littlejohn & Levy Fund II, L.P	Lockwood Holmes	Holmes Lumber Company.
92494	General Electric Company	iXL Enterprises, Inc	Consumer Financial Network, Inc.
92500	Henkel KGaA	The Dial Corporation	The Dial Corporation.
92501	The Dial Corporation	Henkel KGaA	Henkel KGaA.
92508	Lance, Inc	Stolberg Partners, L.P	Cape Code Holdings, Inc.
92509	Lance, Inc	Stephen F. Bernard	Cape Code Holdings, Inc.
92542	Tom Brown, Inc	Unocal Corporation	Union Oil Company of California.
92553	Susan G. Mandl	Lucent Technologies Inc	Lucent Technologies Inc.
		05/13/1999	
90822	SNIA BPD S.pA	Gambro AB	COBE Cardiovascular, Inc/COBE Laboratories, Inc.
91949	First Data Corporation	Bank One Corporation	Paymentech, Inc

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
		05/14/1999	
90804	Provident Companies, Inc	UNUM Corporation	UNUM Corporation.
92380	Sprint Corporation	People's Choice TV Corp	People's Choice TV Corp.
92465	Bull Run Corporation	Universal Sports America, Inc	Universal Sports America, Inc.
92478	General Motors Corporation	Pacifica Group Limited	PBR Automotive Tennessee, Inc.
92499	MS Acquisition Corp	Zenith Industrial Corporation	Zenith Industrial Corporation.
92532	RailWorks Corporation	Douglas Hutchinson	Neosho Incorporated.
92533	RailWorks Corporation	Steven Hutchinson	Neosho Incorporated.
92536	Northern Telecom Limited	Net2000 Communications, Inc	Net2000 Communications, Inc.
92545	Sager Electrical Supply Company, Inc	Sheila Poncher, Trustee	California Switch & Signal, Inc.
92547	Carlisle Companies Incorporated	J. Charles Peterson	Johnson Welding & Manufacturing Co., Inc.
92550	LHS Group, Inc	Priority Call Management, Inc	Priority Call Management, Inc.
92559	CBS Corporation	WinStar Communications, Inc	Office.com Inc.
92561	Sumner M. Redstone	Video City, Inc	Videoland, Inc.
92570	Thomas M. Begel	Joseph A. and Mae Butcko	Crescive Die and Tool, Inc.
92578	Apache Corporation	N.F. Koninklije Nederlandsche Petroleum Maatshappij.	Shell Oil Company.
92581	Schneider S.A	Kent J. Holce	Veris Industries, Inc.
92582	Brewster Kahle	Amazon.com, Inc	Amazon.com, Inc.
92589	Toys ''R'' Us, Inc	Genesis Direct, Inc	Genesis Direct Memphis Operations, LLC. Genesis Direct Memphis Services, LLC.
92590	Mr. and Mrs. Frank D. Osborn	ML Media Partners, L.P	WICC Associates, WEBE Associates.
92597	Gaylord Entertainment Company	CBS Corporation	CBS Corporation.
92598	CBS Corporation	Gaylord Entertainment Company	Gaylord Communications, Inc., Gaylord Television Company.
92599	Anthem Insurance Companies, Inc	New Hampshire-Vermont Health Service d/b/a BCBS of NH.	Health Initiatives, Inc. Matthew Thornton Health Plan, Inc. Matthew Thornton Insurance, Inc. New Hampshire-Vermont Health Services d/b/a BCBS of NH.
92609	SLI, Inc	Gary J. Siegal	Supreme Corporation.
92610	SLI, Inc	Bruce I. Siegal	Supreme Corporation.
92612	Sutton Place Gourmet, Inc	Andrew & Nina Balducci	Balducci Enterprises, Inc.
92613	General Motors Corporation	AT&T Corp	Tele-Communications, Inc.
		05/17/1999	
92502	Morgan Stanley Dean Witter & Co	Arm Holdings plc	Arm Holdings plc.
92531	International Business Machines Corporation.	Comdisco, Inc	Comdisco, Inc.
92591	Wild Oats Markets, Inc	General Nutrition Companies, Inc	Nature's Fresh Northwest, Inc.
92603	Canandaigua Brands, Inc	Franciscan Vineyards, Inc	Franciscan Vineyards, Inc.
92614	BG Media Investors, L.P	Equilease Holding Corp	Com South Telecable, Inc.
92616	Solectron Corporation	Sequel, Inc	Sequel, Inc.
92624	Kleiner Perkins Caufield & Byers VIII, L.P.	Amazon.com, Inc	Amazon.com, Inc.
92625	Greenwich Street Capital Partners II, L.P.	MC Mortgage Company	IMC Mortgage Company.
92638	Lehman Brothers Offshore Investment Partners II L.P.	Lehman Brothers Merchant Banking Partners II L.P.	Blount International, Inc.
92639	Lehman Brothers Capital Partners IV, L.P.	Lehman Brothers Merchant Banking Partners II L.P.	Blount International, Inc.
92642	Simon Property Group, Inc	Stephen R. Karp	WellsPark Group Limited Partnership.
92643	URS Corporation	Dames & Moore Group	Dames & Moore Group.
92652	SCP Private Equity Partners, L.P	Seagram Co. Ltd	Propaganda Films, Inc.
92664	Willis Stein & Partners II, L.P	Donald L. Sanneman	LISN, Inc./Arion, Inc.
92671	Ceridian Corporation	ABR Information Services, Inc	ABR Information Services, Inc.
92676	Employee Stock Ownership Plan of Krause ESOP.	Landmark Communications, Inc	Landmark Specialty Publications, Inc.
92677	Aegis Group plc	Market Facts, Inc	Market Facts, Inc.
		05/18/1999	
92548	Carlisle Companies Incorporated	Edmund A. Ricci	Johnson Welding & Manufacturing Co., Inc.
92579	Royal Dutch Company	Apache Corporation	Apache Corporation.
92644	RCBA Strategic Partners, L.P	URS Corporation	URS Corporation.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
92645	eBay Inc.*	Bernard A. Osher	Butterfield and Butterfield Auctioneers Corporation. HBJ Partners, LLC, 111 Potrero Partners, LLC.
92646	Bernard A. Osher	eBay Inc.*	eBay Inc.*
92647	eBay Inc.*	Irving Rabin	HBJ Partners, LLC, 111 Potrero Partners, LLC.
92648	Irving Rabin	eBay Inc.*	eBay Inc.*
92653	Daniel M. Snyder	Estate of Jack Kent Cooke	Jack Kent Cooke Incorporated.
92667	The Coca-Cola Company	Jerry Whitlock	Whitlock Packaging Corporation.
92672	CBS Corporation	W. Don Cornwell	Granite Broadcasting Corporation.
		05/19/1999	
92507	Province Healthcare Company	Columbia/HCA Healthcare Corporation	Doctors Hospital of Opelousas Limited Partnership.
92515	American Tissue Inc	Crown Vantage, Inc	Crown Paper Co.
92517	Morton Plant Hospital Association	Tenet Healthcare Corporation	RHPC, Inc.
92551	La-Z-Boy Incorporated	Martin G. and Marlene G. Silver (husband and wife).	Bauhaus USA Inc.
92562	Diageo plc	Supervalu Inc	Hazelwood Farms Bakeries, Inc.
92594	Bernard Ebbers	Compart SpA	Intermarine USA, L.L.C. and Intermarine Yachting, Inc.
92595	American Water Works Company, Inc	National Enterprises, Inc	National Enterprises, Inc.
92611	Wolseley plc	Thomas O. Moore, Jr	Summit Structures, Inc.
92628	Spartech Corporation	Alltrista Corporation	Alltrista Plastics Corporation.
92633	Michael W. Lynch	Metro Metals Corporation	Metro Metals Corporation.
92690	Bell Atlantic Corporation	Mario Gabelli	Rivgam Communicators, L.L.C.
		05/20/1999	
92584	CHRISTUS Health	Columbia/HCA Healthcare Corporation	Highland Hospital.
		05/21/1999	
92065	E.I. du Pont de Nemours and Company.	Pioneer Hi-Bred International, Inc	Pioneer Hi-Bred International, Inc.
		05/24/1999	
92469	Tyco International Ltd	The J.R. Clarkson Company	The J.R. Clarkson Company.
92488	Terumo Medical Corporation	Minnesota Mining & Manufacturing Co	Cardiovascular System Department.
92492	New York Life Insurance Company	SmithKline Beecham plc	Diversified Prescription Delivery L.L.C.
92564	Northern States Power Company	Consolidated Edison, Inc	Consolidated Edison Company of New York, Inc.
92568	Northern States Power Company	Niagra Mohawk Holdings, Inc	Niagara Mohawk Power Corporation.
92631	David L. Goldman	Bridgeport Machines, Inc	Bridgeport Machines, Inc.
92637	Mr. Thomas M. Begel	Automotive Systems International, Inc	DynAmerica Manufacturing Co. Flint Manufacturing Co.
92655	Royal Bank of Canada	Security First Technologies Corporation.	Security First Technologies Corporation.
9269	Kent Electronics Corporation	Tom Calicchio	Advacom, Inc.
92684	Silicoon Valley Group, Inc	Watkins-Johnson Company	SEG LLC.
92686	Atlantic American Corporation	Association Casualty Insurance Company.	Association Casualty Insurance Company.
92688	Stuart and Anita Subotnick	New Century Arizona, LLC	New Century Arizona, LLC.
92698	Craig Corporation	Craig Corporation	Angelika Film Centers, L.L.C.
92699	Pemstar, Inc	Bell Microproducts, Inc	Quadras division of Bell Microproducts.
92701	Whitman's Candies, Inc	Rocky Mountain Chocolate Factory, Inc.	Rocky Mountain Chocolate Factory, Inc.
92705	SCF–IV, L.P	Input/Output, Inc	Input/Output, Inc.
92711	Roslyck Paxson	Trustees of Boston University	Boston University Communications, Inc.
92714	Diedrich Coffee, Inc	The Second Cup, Ltd	Coffee People, Inc.
		05/25/1999	
92267	British Energy plc	GPU, Inc	Jersey Central Power & Light Company Metropolitan Edison Company. Pennsylvania Electric Company.
92510	John J. R	ATT&T Corp	InterMedia Partners of Kentucky, L.P.
92511	AT&T Corp	John J. Rigas	FrontierVision Operating Partners, L.P.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
92626	Hologic, Inc	SDI Investments Liquidating Trust	SDI Investments, L.L.C.
92627	SDI Investments Liquidating Trust	Hologic, Inc	DRC Holding Corp.
92632	John J. Rigas	AT&T Corp	TCI of East San Fernando Valley, L.P.
92640	Guitar Center, Inc	Musician's Friend Trust	Musician's Friend, Inc.
92654	Cox Enterprise, Inc	Media General, Inc	Media General Cable of Fairfax County, Inc.
92691	Stonebridge Technologies, Inc	Dewey A. Blaylock	Tactics, Incorporated.
92700	Code, Hennessy & Simmons II LLC	Kent Electronics Corporation	Kent Electronics Corporation.
92708	The Interpublic Group of Companies, Inc.	Mullen Advertising, Inc	Mullen Advertising, Inc.
92709	Marshall W. Pagon	Southeastern Indiana Rural Telephone Cooperative, Inc.	Hoosier Telcom, Inc.
92715	IWKA Aktiengesellschaft	BWI plc	BWI plc.
92717	United Fire & Casualty Company	American Indemnity Financial Corporation.	American Indemnity Financial Corporation.
92718	Thayer Equity Investors III, L.P	James F. Miller	Trase Miller Solutions, Inc.
92721	Hewlett-Packard Company	DAZEL Corporation	DAZEL Corporation.
92722	Kleiner Perkins Caufield & Byers VII, L.P.	American Telephone & Telepgraph, Inc.	At Home Corporation.
92723	Euramax International plc	Atlanta Metal Products, Inc	Atlanta Metal Products, Inc.
92724	CHEMCENTRAL Corporation	Dennis D. Lowery	Continental Industrial Chemical, Inc.
92725	Falcon Products, Inc	Shelby Williams Industries, Inc	Shelby Williams Industries, Inc.
92731	Cortec Group Fund II, L.P	Jay Hecht, two-thirds owner of Filters, Inc.	Filters, Inc.
92735	The Chase Manhattan Corporation	M2 Automotive, Inc	M2 Automotive, Inc.
		05/26/1999	
90353	Kroger Co., (The)	Fred Meyer, Inc	Fred Meyer, Inc.
92728	Mark Cuban	Yahoo! Inc	Yahoo! Inc.
92729	Todd Wagner	Yahoo! Inc	Yahoo! Inc.
92738	Citadel Communications Corporation	Robert F. Fuller	Fuller-Jeffrey Broadcasting Companies, Inc.
92739	Cox Enterprise, Inc	Stuart J. Frankenthal	Cincinnati Auto Auction, Inc. J.A.S. Auto Sales, Inc. Lousiville Auto Auction, Inc. SJF Group Transport, Inc.
92742	Golder, Thoma, Cressey, Rauner Fund V. L.P.	Charles C. Arredia	Form-Tech Steel Inc.
92743	TransMontaigne Inc	Amerada Hess Corporation	Amerada Hess Corporation.
92746	Celerity Partners II, L.P	Mr. James F. Matthews	MATCO Electric Company, Inc., Port City Electric Corp.
92748	Golder, Thoma, Cressey, Rauner Fund V. L.P.	Robert N. Herrington	Herrington Equipment, Inc., Elite Rentals, Ltd. Herrington Partners, Ltd., II.
92749	CM Equity Partners, L.P	ICF Kaiser International, Inc	ICF Consulting Group, Inc., (f/k/a Clement International Corp).
92754	The IT Group, Inc	EMCON	EMCON.
92756	Bell & Howell Company	Tab Products Co	Tab Products Co.
92785	Koninklijke Philips Electronics N.V	Voice Control Systems, Inc	Voice Control Systems, Inc., a Delaware corporation.
		05/27/1999	
92514	Crown Castle International Corp	Powertel, Inc	Powertel Atlanta Towers, LLC. Powertell Birmingham Towers, LLC. Powertell Jacksonville Towers, LLC. Powertell Kentucky Towers, LLC. Powertell Memphis Towers, LLC.
92649	Baine Capital Fund VI, L.P	DAI Statutory Trust	DAI Statutory Trust.
92666	PPG Industries, Inc	Imperial Chemical Industries, p.l.c	Imperial Chemical Industries, p.l.c.
92758	Madison Dearborn Capital Partners III, L.P.	Dakota Services, Ltd	Dakota Services, Ltd.
		05/28/1999	
92694	Mason Wells Leveraged Buyout Fund I, Limited Partnership.	Premix, Inc	Premix, Inc.
92730	Regal-Beloit Corporation	Lincoln Electric Holdings, Inc	The Lincoln Electric Motor Division.
92753	Craig Johnson and Barbara Johnson	Champion International Corporation	Champion International Corporation.
92791	William Hearst II	AT&T Corp	At Home Corporation.
92802	Concur Technologies, Inc	Seeker Software, Inc	Seeker Software, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
92803	Brentwood Associates VIII, L.P	Concur Technologies, Inc	Concur Technologies, Inc.
		06/01/1999	
92693	Sprint Corporation	American Telecasting, Inc	American Telecasting, Inc.
92697	Allied Waste Industries, Inc	Anthony H. Giordano	Giordano Recycling Corp.
92703	Pasco Acquisition Inc	Lykes Consumer Brands, Inc	Lykes Bros. Inc. Lykes Pasco Packing Co. Lykes Pasco, Inc. Lykes Transport, Inc. Vitality Foodservice, Inc.
92733	Roger S. Penske	International Speedway Corporation	International Speedway Corporation.
92734	International Speedway Corporation	Roger S. Penske	PSH Corp.
92747	Fund American Enterprises Holdings, Inc.	The Centris Group, Inc	USF RE Insurance Company.
92751	Richard B. Cohen	James Ferrera & Sons, Inc	James Ferrera & Sons, Trust.
92752	Greenwich Street Capital Partners II, L.P.	Leslie K. & Harvey Wagner	Teknekron Infoswitch Corporation.
92759	International Game Technology	Sodak Gaming Inc	Sodak Gaming Inc.
92763	O. Bruton Smith	Lucien S. Riley	Lute Riley Motors, Inc.
92764	McLeodUSA Incorporated	Frank Noverr	Noverr Publishing, Inc.
92768	United News & Media plc	CMP Media Inc	CMP Media Inc.
92771	Theodore Leonsis	Abe Pollin	Washington Capitals Limited Partnership.
92772	NationsRent, Inc	Thomas P. and Lorraine S. Dimeo	Chapman Equipment, a Division of Dimeo Construction Company.
92775	Forstmann Little & Co. Equity Partnership V, L.P.	Victor Valley Community Hospital	Victor Valley Community Hospital.
92776	JLG Industries, Inc	Gradall Industries, Inc	Gradall Industries, Inc.
92781	L. John Doerr	AT&T Corp	At Home Corporation.
92784	Swiss Reinsurance Company	Nationwide Mutual Insurance Company.	Allied Life Financial Corporation.
92787	Evening Post Publishing Company	WLEX–TV, Inc	WLEX–TV, Lexington, Kentucky.
92788	MACTEC, Inc	CILCORP Inc	QST Environment Inc.
92789	CVS Corporation	Thomas G. Pigott	Soma Corporation.
92790	Thomas G. Pigott	CVS Corporation	CVS Corporation.
92793	Claire M. White 1952 Trust	American Water Works Company, Inc	American Water Works Company, Inc.
92800	TA/Advent VIII, L.P	FCP Southeast Investors IV, L.P	Perfecto Holding Corp.
92810	Cox Enterprises, Inc	Gary Fears	Dent Wizard Southeast LLP.
92814	First Reserve Fund VIII, Limited Partnership.	Pride International, Inc	Pride International, Inc.
		06/02/1999	
92678	Quintiles Transnational Corp	John A. Henderson	SMG Marketing Group, Inc.
92679	John A. Henderson	Quintiles Transnational Corp	Quintiles Transnational Corp.
92736	ITT Industries, Inc	Gerald Moreland	HAI Molding Company. Hydro Air Industries, Inc.
92737	ITT Industries, Inc	Darrell Crosby	HAI Molding Company. Hydro Air Industries, Inc.
92740	United Rentals, Inc	James and Elizabeth Mango	Mango Equipment Co., Inc.
92755	Leviathan Gas Pipeline Partners, L.P	KN Energy, Inc	Natoco, Inc. and Naloco, Inc.
92770	GS Capital Partners III, L.P	Diginet Americas, Inc	Diginet Americas, Inc.
92786	General Electric Company	S. Kenneth Hendricks	Henderson, Black & Greene, Inc.
92795	United Rentals, Inc	Eleanor Heaton	Advance Barricandes and Signing, Inc. Coast Line Marking, Inc. JADCO Signing, Inc. Warning Safety Lights of Georgia, Inc. Warning Safety Lights, Inc.
92796	United Rentals, Inc	J. Dana Woudenberg	Woudenberg Enterprises, Inc.
92797	United Rentals, Inc	WLI Industries, Inc	WLI Industries, Inc.
92806	CRH plc	Sidney E. Blandford, III	B and B Excavating, Inc.
92817	Robert S. Howard	Westmedia Corporation	Westmedia Corporation.
92819	Wallace Computer Services, Inc	Mr. Gary Tepner	Commercial Instant Print. Commercial Press, Inc.
92820	The Progressive Corporation	The Plymouth Rock Company Incorporated.	The Plymouth Rock Company Incorporated.
92821	Bechtel Group, Inc	CBS Corporation	CBS Corporation
92824	General Atlantic Partners 46, L.P	Metapath Software International, Inc	Metapath Software International, Inc.
92825	General Atlantic Partners 30, LP	Metapath Software International, Inc	Metapath Software International, Inc.
92827	FirstAmerica Automotive, Inc	Donald L. & Sally S. Lucas	Lucas Dealership Group, Inc.
92830	Sonepar S.A	Richard Cooper	Cooper Electric Supply Co.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
92832	Andrew J. McKelvey	LAI Worldwide, Inc	LAI Worldwide, Inc.
92833	FKI, plc	Industry General Corporation	Industry General Corporation.
92834	Alliance Holdings, Inc. ESOP	Donald W. Wallace	Lazy Days R.V. Center, Inc.
92836	SOFTBANK Corp	InsWeb Corporation	InsWeb Corporation.
92841	Oak Investment Partners VIII, L.P	Metawave Communications Corporation.	Metawave Communications Corporation.
92842	Angus R. Cooper, II	Kimberly-Clark Corporation	Kimberly-Clark Worldwide, Inc., Kimberly-Clark Tissue Co.
92843	David J. Cooper, Sr	Kimberly-Clark Corporation	Kimberly-Clark Worldwide, Inc., Kimberly-Clark Tissue Co.
92845	Harcourt General, Inc	The Family Education Company	The Family Education Company.
92846	The Titan Corporation, a Delaware corporation.	Samir Desai	Systems Resources Corporation.
92847	AutoNation, Inc	Maria Smith	Dodge of Bellevue, Inc., Kirkland Pontiac-Buick-GMC, Inc. Town & Country Chrysler Jeep, Inc., Ford of Kirkland, Inc.
92849	Cox Enterprises, Inc	Michael L. Robertson	MP3.Com, Inc.
92850	Regent Corporation	Laura Ashley Holdings plc	Laura Ashley (North America), Inc.
92852	STERIS Corporation	Ishihara Sangyo Kaisha, Ltd	Ricerca, Inc.
92855	Bethesda Health Group, Inc	Tenet Healthcare Corporation	Tenet HealthSystem DI, Inc., Tenet HealthSystem DI-SNF, Inc.
92856	Joseph Littlejohn & Levy Fund III, L.P	Grupo Empresarial G, S.A. de C.V	MC II Holdings (USA), Inc.
92865	Bain Capital Fund VI, L.P	Wayne Carlisle	Carlisle Construction Co., Inc.
		06/03/1999	
91776	Eramet, S.A	Elkem ASA	Elkem Metals Company L.P.
		06/04/1999	
92662	Chester C. Davenport	GTE Consumer Services Incorporated	GTE Consumer Services Incorporated.
92741	Spring Corporation	André Chagnon	Videotron USA, Inc.
92769	Yorktown Energy Partners III, LP	Global Industrial Technologies, Inc	Ameri-Forge Corporation.
92780	Triangle Pharmaceuticals, Inc	Glaxo Welcome plc	Glaxo Group Limited plc. Glaxo Wellcome Inc. Glaxo Wellcome plc. The Wellcome Foundation Limited.
92826	Arvind Pradham	Stonach Trust	Magna Lomason, Inc.
92853	Leggett & Platt, Incorporated	Edward L. Shimmon	Beeline Group, Inc.
92854	Crescent Operating, Inc	E.L. Lester, Jr	E.L. Lester & Company, Incorporated.
92858	FS Equity Partners IV, L.P	The Limited, Inc	Gaylan's Trading Company, Inc.
92862	Linda G. Alvarado and Robert L. Alvarado (husband and wife).	Tricon global Restaurants, Inc	Pizza Hut, Inc., Pizza Hut of America, Inc.
92867	MDU Resources Group, Inc	DSS Company, a California Corporation.	DSS Company, a California Corporation.
92868	Quantum Corporation	Meridian Data, Inc	Meridian Data, Inc.
92870	Insignia Financial Group, Inc	Douglas Elliman, Inc., a New York partnership.	Douglas Elliman, Inc.
92876	Sysco Corporation	Howard N. Marcus	The Buckhead Beef Company, Inc.
92878	Summit Ventures V, L.P	Robert Horgan	Newmarket International, Inc.
92879	Joseph Littlejohn & levy Fund II, L.P	O'Donnell & Masur, L.P	MBS Holdings, Inc.
92887	Robert Bosch Industrietreuhand KG	Automotive Lighting Holding GmbH	Automotive Lighting Holding GmbH.
92888	Fiat S.p.A	Automotive Lighting Holding GmbH	Automotive Lighting Holding GmbH.
92892	Liz Claiborne, Inc	Gene Montesano	Lucky Brand Dungarees, Inc.
92895	Madison River Telephone Company, LLC.	Gulf Coast Services, Inc	Gulf Coast Services, Inc.
92897	USA Networks, Inc	Cendant Corporation	Match.com.
92898	Pentair, Inc	Essef Corporation	Essef Corporation.
92899	UBS AG	F. Holmes Lamoreux	Dimension Aviation, Inc. Sabreliner Corporation. SabreTech, Inc.
92900	AboveNet Communications, Inc	Compaq Computer Corporation	Compaq Computer Corporation.
92905	The Home Depot, Inc	Harry L. Gilham	Georgia Lighting Supply Company, Inc.
92911	CSK Auto Corporation	Richard B. Shaller and Rossy Shaller (husband & wife).	APSCO Products Company.
92915	Motor Club of America	North East Insurance Company	North East Insurance Company.
92918	Conning Insurance Capical Limited Partnership V, L.P.	Clark/Bardes Holdings, Inc	Clark/Bardes Holdings, Inc.
92935	SLK, L.L.C	National Discount Brokers Group, Inc	Equitrade Partners L.L.C.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
		06/08/1999	
92831	Ford Motor Company	Continental Grain Company	Triad Financial Corporation.
92838	Chancellor Media Corporation	Hicks, Muse, Tate & Furst Equity Fund III, L.P.	Capstar Broadcasting Corporation.
92839	Hicks, Muse, Tate & Furst Equity Fund III, L.P.	Chancellor Media Corporation	Chancellor Media Corporation.
92874	Textron Inc	RFC Capital Corporation	RFC Capital Corporation.
92908	Severn Trent Plc	TETRA Technologies, Inc	TETRA Process Technologies.
92928	Kotobuki Fudosan Ltd	Sanford L. Korschum	Pepsi-Cola Bottling Company of Goldsboro, Inc.
92931	The SKM Equity Fund II, L.P	Richard H. Behrens	Cascade Die Mold, Inc.
92942	Avis Rent A Car, Inc	Cendant Corporation	PHH Holdings Corporation.
92943	California State Automobile Association Inter-Ins. Bureau.	Western United Insurance Services, Inc.	Western United Insurance Services, Inc.
92945	James D. Wallenfelsz	M.A. Hanna Company	M.A. Hanna Resin Distribution Company.
92946	SMART Modular Technologies, Inc	Compaq Computer Corporation	Compaq Computer Corporation.
92948	Hyundai Electronics Industries Co., Ltd., a Korean company.	LG Semicon Co., Ltd	LG Semicon Co., Ltd.
92953	KACL Holdings, Inc	Roland and Maria Elena Garcia (husband and wife).	Original Impressions, Inc.
92954	UBS AG, a Swiss Banking Corporation	American Sports Products Group, Inc	American Sports Products Group, Inc.
92955	Avis Rent A Car, Inc	John R. Burch, Sr	Motorent, Inc.
92959	The Bear Steams Companies Incorporated.	Kalb Voorhis & Co., L.L.C	Kalb Voorhis & Co., L.L.C.
92960	Computer Associates International, Inc	CHS Electronics, Inc	CHS Electronics, Inc.
92963	United Community Financial Corp	Butler Wick Corp	Butler Wick Corp.
92965	U.S. Industries, Inc	Gatsby Corporation	Gatsby Spas, Inc.
92966	Unidare plc	Robert B. Thompson and Carole L. Thompson.	Oklahoma Rig & Supply Company, Inc.
92981	General Electric Company	Associates First Capital Corporation	Avco Financial Services International, Inc.
92993	Richard O'Leary	G. Roger Crawford	Thermoguard Equipment, Inc.
92997	Bertarelli & Cie	American Home Products Corporation	American Home Products Corporation.
93001	Sumner M. Redstone	Cox Enterprises, Inc	Entertainment Tonight.
93010	American International Group, Inc	Real Time Data, Inc	Real Time Data, Inc.
93015	Wyndham International, Inc	Patriot American Hospitality, Inc	Patriot American Hospitality, Inc.
93016	Apollo Investment Fund IV, L.P	Wyndham International, Inc	Wyndham International, Inc.
93017	Apollo Real Estate Investment Fund IV, L.P.	Wyndham International, Inc	Wyndham International, Inc.
93018	Thomas H. Lee Equity Fund IV, L.P	Wyndham International, Inc	Wyndham International, Inc.
93019	Beacon Capital Partners, Inc	Wyndham International, Inc	Wyndham International, Inc.
93023	Thomas H. Lee Equity Fund IV, L.P	American Home Products Corporation	American Cyanamid Company.
93030	O. Bruton Smith	Haywood B. Hyman, Sr	Charleston Lincoln Mercury, Inc.
		06/09/1999	
92773	Vivendi S.A	Applied Materials, Inc	Applied Materials, Inc.
92886	General Electric Company	The Long Term Credit Bank of Japan, Limited.	The Long Term Credit Bank of Japan, Limited.
92952	Integrated Electrical Services, Inc	James A. Campbell	Pan American Electric, Inc.
92961	Cisco Systems, Inc	Robert Bosch GmbH	Bosch Telecom GmbH.
92967	Tweeter Home Entertainment Group, Inc.	The Romagnolo Family Trust	Dow Stereo/Video, Inc.
92974	McGraw-Hill Companies, Inc. (The)	Pearson plc	Appleton & Lange.
92976	U.S. Bancorp	Mellon Bank Corporation	Mellon Bank, N.A.
92979	Carlton Communications Pic	Seagram Company Ltd., The	Campania Limited.
92991	Warburg, Pincus Investors, L.P	Pearson plc	Master Data Center, Inc.
93012	BJ Services Company	Fracmaster Ltd	Fracmaster Ltd.
		06/11/1999	
92683	Northeast Utilities	ANG Holdings, LLC	Aurora Northeast Energy, LLC, Aurora Natural Gas, LLC.
92757	Sprint Corporation	Thomas A. Howard	Transworld Telecommunications, Inc.
92761	AmeriSource Health Corporation	C.D. Smith Healthcare, Inc	C.D. Smith Healthcare, Inc.
92765	GS Capital Partners II, L.P	Consolidated Edison,Inc	Consolidated Edison Co. of New York.
92777	Aviation Partners, Inc	The Boeing Company	The Boeing Company
92778	The Boeing Company	Aviation Partners, Inc	Aviation Partners, Inc.
92807	AT&T Corp	Everett R. Dobson Irrevocable Family Trust.	Dobson Communications Corporation.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
92816	PSINet, Inc	Timothy W. Jackson	The Internet Access Company, Inc.
92837	Playtex Products, Inc	Colgate-Palmolive Company	Colgate-Palmolive Company.
92840	Familiengesellschaft Dr. Hanns Voith GbR.	Scapa Group plc	KRC (Western) Inc. KRC Hewitt Inc. KRC Inc. KRC Northern Inc. KRC Southern Inc. KRH Rolls, Inc. Perma-Flex (Southern) Inc. Perma-Flex NA, Inc. Perma-Flex Rollers, Inc. Scapa Dryer Fabrics, Inc. Scapa Enterprises, Inc. Scapa Finance Inc. Scapa Forming Fabrics Inc. Scapa Group Inc. Scapa Group, Inc. Scapa Holdings, Inc. Scapa Paper Machine Clothing (Dryer), Inc. Scapa Paper Machine Clothing (Forming) Inc. Scapa Paper Machine Clothing (Press) Inc. Scapa Press Fabrics Limited Partnership. Scapa Press Fabrics LLC. Scapa Rolls Neenah Limited Partnership. Syn Strand, Inc.
92869	Jean-Claude Decaux	Vivendi S.A	Havas Transportation Media, Inc Sky Sites, Inc.
92894	IMRglobal Corp	Orion Consulting, Inc	Orion Consulting, Inc.
92901	ITC⁻ DeltaCom, Inc	AvData Systems, Inc	AvData Systems, Inc.
92916	British Telecommunications plc	Welsh, Carson, Anderson & Stowe VII, L.P.	Control Data Holding Corporation.
92930	SkyNet Holdings, Inc	Greenstreet Pony Partners, L.L.C	Pony Express Delivery Services, Inc.
92932	Consolidated Edison, Inc	Northeast Utilities	Western Massachusetts Electric Company.
92934	Exodus Communications, Inc	Welsh, Carson, Anderson & Stowe VI, L.P.	Cohesive Technology Solutions, Inc.
92937	Grupo Picking Pack S.A	Berkshire Fund IV, L.P	Wagon Holdings, Inc.
92947	Niagara Mohawk Holdings, Inc	Telergy, Inc	Telergy, Inc.
92962	Motorola Inc	Robert Bosch GmbH	Bosch Telecom GmbH.
92968	News Corporation Limited, (The)	Metromedia International Group, Inc	Metromedia International Group, Inc.
93058	Bernard Arnault, an individual	James F. McCann, an individual	1–800–FLOWERS.COM, Inc.
92782	Aon Corporation	Ian H. Graham	Ian H. Graham, Inc.
92808	Boston Ventures Limited Partnership V	Production Resource Group, Inc	Production Resource Group, Inc.
92809	Jeremiah J. Harris	Production Resource Group, Inc	Production Resource Group, Inc.
92896	Vision Solutions, Inc	NCR Corporation	NCR Corporation.
92927	Giant Eagle, Inc	Park Orchards, Inc	Park Orchards, Inc.
92982	AT&T Corp	ACTV, Inc	ACTV, Inc.
92989	Issam M. Fares	Arthur R. Richard	Matrix Engineering, Inc.
92994	Guide One Mutual Insurance Company.	Charles A. Smith	Anson B. Smith & Co.
92995	Guide One Mutual Insurance Company.	Ted A. Smith	Anson B. Smith & Co.
92996	AutoNation, Inc	Jon Clayton Dokmo	Downers Grove Dodge, Inc.
92998	Novartis AG	Mentor Corporation	Mentor Caribe, Inc.
93000	Apollo Investment Fund IV, L.P	Blackstone Captial Partners III Merchant Banking Fund L.P.	OTG, Inc.
93005	El Camino Resources International, Inc.	GATX Corporation	GATX Capital Corporation.
93006	GATX Corporation	El Camino Resources International, Inc.	El Camino Resources International, Inc.
93013	Millers American Group, Inc	Acceptance Insurance Companies Inc	Acceptance Insurance Companies Inc. Phoenix Indemnity Insurance Company.
93025	Crane Co	Plunkett-Webster, Inc	Plunkett-Webster, Inc.
93027	Fremont Partners, L.P	Karen Marsh MacLeod Trust	Tapco International Corporation.
93028	Marmon Holdings, Inc	Osteomed Corporation	Osteomed Corporation.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
93031	Dartford Partnership L.L.C	Aurora Foods Inc	Aurora Foods Inc.
93032	V. Parker Overton	Donald L. Kotula	Norquip Leasing, Inc. Northern Tool & Equipment Catalog Company, Inc. Northern Tool & Equipment Company, Inc.
93033	Cornell Corrections, Inc	Interventions	IDDRS Foundation.
93038	Province Healthcare Company	LifePoint Hospitals, Inc	Barrow Medical Center, LLC.
93039	Align-Rite International, Inc	Harris Corporation	Harris Corporation.
93040	Global Imaging System, Inc	Lewan & Associates, Inc	Lewan & Associates, Inc.
93042	Fedeal Signal Corporation	Clapp & Haney Tool Co., Inc	Clapp & Haney Tool Co., Inc.
93043	New England Electric System	New Century Energies, Inc	Texas-Ohio Gas, Inc.
93044	Philip F. Anschutz	Precision Systems, Inc	Precision Systems, Inc.
93045	Voting Trust, 12/4/68, for v.s. of Hallmark Cards Inc.	Cook Communications Ministries	David C. Cook Publishing Co.
93046	Eclipsys Corporation	Anna L. Bean	MSI Integrated Services, Inc., MSI Solutions, Inc.
93047	Anna L. Bean	Eclipsys Corporation	Eclipsys Corporation.
93050	David D. Smith	Trust A U/W of Douglas W. Griffith	Griffith Motor Sales, Inc.
93053	Mr. Harry J. Pappas	Value Vision International, Inc	VVI Baytown, Inc. VVILPTV, Inc.
93056	Foster Poultry Farms	ConAgra, Inc	Swift-Eckrich, Inc.
93057	Dowling Textile Company	Cardinal Health, Inc	Allegiance Healthcare Corporation.
93059	General Electric Company	Phoenix Home Life Mutual Insurance Company.	American Phoenix Life and Reinsurance Company.
93064	IRMC Holdings, Inc	Ruvin Schwartz and Judith Schwartz	Coldata of Arizona, Inc. Coldata, Inc. (a CA corporation). Coldata, Inc. (a FL corporation). Coldata, Inc. (a MI corporation). Coldata, Inc. (a NY corporation). Coldata, Inc. (a IL corporation).
93066	United Rentals, Inc	Elmen Rent All Inc. Employee Stock Ownership Plan and Trust.	Elment Rent All Inc Employee Stock Ownership Plan and Trust.
93067	Saratoga Resources, Inc	OptiCare Eye Health Centers, Inc.	OptiCare Eye Health Centers, Inc.
93068	Vanguard Health Systems, Inc	Triad Hospitals, Inc	Triad Assets.
93069	InfloUSA	First Data Corporation	DM Holdings, Inc.
93071	MacNeal-Schwendler Corporation (The).	Nearchos Irinarchos	MARC Analysis Research Corporation.
93072	TWC Virginia, Inc	Secor Family 2 Limited Partnership	Yankee Book Peddler, Inc.
93078	John Wiley & Sons, Inc	Pearshon plc	Jossey-Bass Inc.
93079	Nu Skin Enterprises, Inc	Nu Skin USA, Inc	Big Planet, Inc.
93094	Steven M. Scott, M.D	FPA Medical Management, Inc. (debtor-in-possession).	FPA Medical Management, Inc. (debtor-in-possession).
93097	Robert J. Tomsich	Allied Marine Group, Inc	Allied Marine Group, Inc.
93101	Wolters Kluwer nv	Pearson plc	Bureau of Business Practices.
9105	ABRY Broadcast Partners II, L.P	August C. Meyer	Midwest Television, Inc.
9106	Jupiter Partners II L.P	Donald R. Draughon, Jr	Convenience USA, LLC.
9107	CGI Group Inc	Deloitte & Touche USA LLP	DRT Systems International. DRT Systems international LL.P.
93138	Conseco, Inc	Mark A. Susz	Inter-State Service, Inc.
93141	Diageo plc	James E. Lewis	Anthony Foods, LLC.
		06/16/1999	
92906	A.H. Belo Corporation	Fred William Patterson, Sr. & Patsy C. Patterson.	Denton Publishing Company, Inc.
92914	McBride and Associates, Inc	The General Electric Company, p.l.c	Marconi Enterprise Solutions, Inc.
92923	Partek Oyj Abp	Zeteco AB	Zeteco AB.
92944	IMS Health Incorporated	Gartner Group, Inc	Gartner Group, Inc.
92950	United Rentals, Inc	Alan Udelson	National Equipment Finance Company.
92951	United Rentals, Inc	David Udelson	National Equipment Finance Company.
92964	American Physician Partners, Inc	Questar Imaging, Inc	Questar Imaging, Inc.
92984	Plains Resources, Inc	Chevron Corporation	Chevron Pipeline Company.
93020	Skanska AB	Alex J. Etkin, Inc., a Michigan Corporation.	Alex J. Etkin, Inc., a Michigan Corporation.
93037	Fisher Companies Inc	Koch Industries, Inc	Koch Fisher Mills, L.L.C.
93070	Metris Companies, Inc	General Electric Company	GE Capital Consumer Card Co. (Visa/Mastercard business).
93073	Code, Hennessy & Simmons III, L.P	A.L. Kotler and Shirley Kotler	Gleason National Corporation.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
93084	Park Place Entertainment Corporation	Starwood Hotels & Resorts Worldwide, Inc.	Caesars World, Inc. Sheraton Tunica Corporation.
93085	Willis Stein & Partners II, L.P	William H. Hood, III	Special Data Processing Corporation.
93103	Superior Carriers, Incorporated	Thomas & Kerry Wieringa	Carry Companies of Illinois, Inc., Fleetlease, Inc. Dutch Associates Limited Partnership.
		06/17/1999	
93004	Trust of Fred R. Smith and Ouida M. Smith.	Alexander & Baldwin Inc	Matson Navigation Company, Inc.
93086	Kyocera Corporation	ACX Technologies, Inc	Golden Genesis Company.
93093	Tandy Corporation	AmeriLink Corporation	AmeriLink Corporation.
93096	Willis Stein & Partners II, L.P	Colonial Acquisition Corp	Colonial Acquisition Corp.
93100	AGRA Inc	Thomas A. Simons	NPC Investments Inc.
93104	MEDIQ Incorporated	Medical Specialties Group Inc	Medical Specialties Group Inc.
93109	U.S. Foodservice	Corporate Express, Inc	Sofco, Inc.
		06/18/1999	
93009	Paul G. Allen	Datek Online Holdings Corp	The Island ECN, Inc.
93022	Heidelberger Zement AG	Scancem AB	Scancem AB.
93051	Paul G. Allen	drugstore.com Inc	drugstore.com Inc.
93075	RadiSys Corporation	Texas Micro Inc	Texas Micro Inc.
93211	BCE Inc	SkyView Media Group, Inc	SkyView Media Group, Inc.
		06/21/1999	
84490	Albertson's Inc	American Stores Company	American Stores Company.
92600	ALSTOM	ABB ALSTOM Power N.V	ABB ALSTOM Power N.V.
92601	ABB AB	ABB–ALSTOM Power N.V	ABB–ALSTOM Power N.V.
92623	ABB AG	ABB–ALSTOM Power N.V	ABB–ALSTOM Power N.V.
92829	Equilease Holding Corp	Mr. & Mrs. Mansfield Jennings	ComSouth Telecable, Inc.
92884	Kirtland Capital Partners III L.P	Instron Corporation	Instron Corporation.
92912	McKechnie pic	Western Sky Industries, Inc	Western Sky Industries, Inc.
92929	Thyssen Krupp AG	Cummins Engine Company, Inc	Atlas Crankshaft Corporation.
92949	The SKM Equity Fund II, L.P	Richard F. Schneider	Tri-Molded Plastics, Inc., Tri-Matix Corp.
92958	Genzyme Corporation	BioMarin Pharmaceutical, Inc	BioMartin Pharmaceutical, Inc.
93082	L.B. Foster Company	CXT Incorporated	CXT Incorporated.
93091	Freudenberg & Co. of Weinheim, Germany.	Freudenberg & Co. of Weinheim, Germany.	Farman-Meillor Sealing Systems, Inc.
93098	Texas Instruments Incorporated	Telogy Networks, Inc	Telogy Netowrks, Inc.
93108	HPD Holdings Corp	Britol-Meyers Squibb Company	Bristol-Myers Squibb Company.
93110	Atlantic Equity Partners International II L.P.	Tru-Circle Corporation	Tru-Circle Corporation.
93113	Cambrex Corporation	FMC Corporation	FMC Corporation.
93115	Robert G. Brown	PIA Merchandising Services, Inc	PIA Merchandising Services, Inc.
93116	The Goldman Sachs Group, Inc	Southern Pacific Funding Corporation	Southern Pacific Funding Corporation.
93120	Ira Leon Rennert	Chevron Corporation	Chevron Coal Development Company. Pittsburg & Midway Coal Mining Co., Farco Mining, Inc.
93121	Thomas O. Hicks	Chancellor Media Corporation	Chancellor Media Corporation.
93122	R. Steven Hicks	Chancellor Media Corporation	Chancellor Media Corporation.
93123	Phillips Petroleum Company	American Liberty Oil Company	American Liberty Oil Company.
93125	DLJ Merchant Banking Partner II, L.P	Royse and Barbara Myers	Thermal Transfer Products, Ltd.
93126	Pentair, Inc	Equilease Holding Corp	DeVibiss Air Power Company.
93128	Avery Dennison Corporation	Stimsonite Corporation	Stimsonite Corporation.
93129	Jackpot Enterprises, Inc	Players International, Inc	Players International, Inc.
93134	Marmon Holdings, Inc	John A. Gerthisch	Gerthisch Family LLC. PMC Corporation.
93142	Seton Scholl Healthcare plc	London International Group plc	London International Group plc.
93146	O. Bruton Smith	Manhattan Auto, Inc	Manhattan Auto, Inc.
93151	PPG Industries, Inc	Akzo Nobel NV	PRC-DeSoto International, Inc.
93165	Ford Motor Company	Insurance Holdings of America, Inc	Insurance Holdings of America, Inc.
93166	Yellow Corporation	Jevic Transportation, Inc	Jevic Transportation, Inc.
93168	J.W. Childs Equity Partners II, L.P	Tradescape.com, Inc	Tradescape.com, Inc.
93174	SER Systems AG	David Shellenbarger	MacroSoft, Inc.
93175	Meyer International PLC	Rentx Industries, Inc	Rentx Industries, Inc.
93177	SOFTBANK Corp	James F. McCann	1–800–FLOWERS.COM, Inc.
93178	General Electric Company	OnStream International, Inc	OnStream International, Inc.
93181	Trannekk Crow Company	John T. Killian	Phoenix Corporate Service, LLC.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
93183	Applied Cellular Technology, Inc	David Romano	Bostek, Inc.
93184	Applied Cellular Technology, Inc	Eric Limont	Bostek, Inc.
93186	Sun International Hotels Limited	Starwood Hotels & Resorts Worldwide, Inc.	The Desert Inn Resort & Casino.
93189	Transit Group, Inc	David L. Summitt	Bestway Trucking, Inc.
93192	Ford Motor Company	American Information Company, Inc	American Information Company, Inc.
93193	SPS Technologies, Inc	National Set Screw Corporation	National Set Screw Corporation.
93196	Waterford Wedgewood plc	Wasserstein Perella Group, Inc	All-Clad Holdings, Inc.
93199	Real Software NV	TAVA Technologies, Inc	TAVA Technologies, Inc.
93207	McLeodUSA Incorporated	Scott F. Cate	S.J. Investments Holdings, Inc.
93208	McLeodUSA Incorporated	James R. Greenbaum, Jr	S.J. Investments Holdings, Inc.
93209	Scott F. Cate	McLeodUSA Incorporated	McLeodUSA Incorporated.
93220	Invensys plc	Marcam Solutions, Inc	Marcam Solutions, Inc.
93222	Suez Lyonnaise des Eaux	Suez Lyonnaise des Eaux	Trigen-Nations Energy Company, LLP.
93239	Policy Management Systems Corporation.	Summit Ventures IV, L.P	DORN Technology Group, Inc.
93242	Benchmark Capital Partners III, L.P	James F. McCann	1–800–FLOWERS.COM, Inc.
93243	Weatherford International, Inc	Dailey International Inc	Dailey International Inc.
		06/22/1999	
92883	United Rentals, Inc	Raytheon Company	Arayco Inc.
92983	RAG Aktiengesellschaft	Cyprus Amax Minerals Company	Cyprus Amax Minerals Company.
93011	State Street Research Income Trust	Real Time Data, Inc	Real Time Data, Inc.
93152	UBS AG	Aurora Foods Inc	Aurora Foods Inc.
93172	ACNielsen Corporation	Richard C. Seal	Market Decisions.
93173	ACNielsen Corporation	William A. Zumbiel	Market Decisions.
93180	SFX Entertainment, Inc	Randal A. Hendricks	Hendricks Management Company, Inc.
93206	Letitia Corporation	Charles A. Evans, Jr	Charles Evans & Associates.
93214	TBI PLC	Airport Group International Holdings, L.L.C.	Airport Group International, Inc.
93215	Airport Group International Holdings, L.L.C.	TBI PLC	TBI PLC.
		06/23/1999	
93052	SBC Communications, Inc	The Williams Companies, Inc	Williams Communications Group, Inc.
93127	Telefonos de Mexico, S.A. de C.V	The Williams Companies, Inc	The Williams Communications Group, Inc.
		06/24/1999	
92919	Metromedia International Group, Inc	PLD Telekom Inc	PLD Telekom, Inc.
92988	AT&T Corp	BellSouth Corporation	Honolulu Cellular Telephone Co.
93021	Bioglan Pharma PLC	Medicis Pharmaceutical Corporation	Medicis Pharmaceutical Corporation.
93112	World Access, Inc	Gregory A. Somers	Comm/Net Holding Corporation.
93135	General Motors Corporation	The Bank of New YorkCompany, Inc	BNY Financial LLC.
93182	Ashland, Inc	Tommy Thompson	Rainbow Concrete Company.
93194	Synetic, Inc	Medical Manager Corporation	Medical Manager Corporation.
93200	National-Oilwell, Inc	SCF–III, L.P	CE Drilling Products, Inc.
93219	Madison Dearborn Capital Partners II, L.P.	Richard Milanowski	Central Fabricators, Inc.
93227	ZF Friedrichshafen AG	Meritor Automotive, Inc	Meritor Automotive, Inc. Mentor Clutch Co.
93228	Meritor Automotive, Inc	ZF Friedrichshafen AG	ZF Friedrichshafen AG.
93229	CAF Holdings, Inc	Monterey Carpets, Inc	Monterey Carpets, Inc.
93237	Minolta Co., Ltd	QMS, Inc	QMS, Inc.
93249	Primus Telecommunications Group, Incorporated.	Telegroup, Inc	Corporate Networks Limited. Global Access Pty. Ltd. Global Access Sales, Inc. Phone Contre Limited. South East Telecom Limited. TeleContinent S.A. Telegroup (UK) Limited. Telegroup Deutschland GmbH. Telegroup Hong Kong Ltd. Telegroup International B.V. Telegroup Italia S.r.l. Telegroup Japan Kabushikil Kaisha. Telegroup Nederland B.V. Telegroup Network Services Danmark ApS.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
			Telegroup Network Services Deutschland GmbH.
			Telegroup Network Services SA.
			Telegroup South Europe, Inc.
			Telegroup, Inc.
93254	EMSlcon Investments, LLC	SMTC Corporation	SMTC Corporation.
		06/25/1999	
93221	Alistar Pilot Fund LLC	Neuvant Aerospace Corporation	Neuvant Aerospace Corporation.
		06/28/1999	
92617	Danaher Corporation	Mrs. Kathryn C. Hach-Darrow	C&K Enterprises, Ltd.
			Hach Company.
93048	Fresenius Aktiengesellschaft	Sisters of St Joseph of Nazareth	St John Dialysis Network, L.L.C.
93130	Park-Ohio Holdings Corp	Rones Limited Partnership	Industrial Fasteners Corporation.
93161	FirstEnergy Corp	DQE, Inc	Duquesne Light Company.
93169	Ripplewood Partners, L.P	JLC Holdings, Inc	JLC Learning Corporation.
93197	Loyd Ivey	Calvert Holdings, LLC	Calvert Holdings, LLC.
93210	McLeodUSA Incorporated	Access Communications Holdings, Inc	Access Communications Holdings, Inc.
93212	The Peninsular and Oriental Steam Navigation Company.	MSC Holding Company, L.P	International Terminal Operating Co., Inc.
93223	Joseph Littlejohn & Levy Fund II, L.P	Walter E. Kellogg III	Kellogg Lumber Company.
93224	CFI ProServices, Inc	ULTRADATA Corporation	ULTRADATA Corporation.
93226	Global Crossing Ltd	Telergy, Inc	Telergy, Inc.
93232	CBS Corporation	Banyan Systems Incorporated	Switchboard Incorporated.
93233	Allegiance Telecom, Inc	PennCorp Financial Group, Inc	KIVEX, Inc.
93235	Warburg, Pincus, Equity Partners, L.P	Edify Corporation	Edify Corporation.
9326	Aurora Equity Partners, L.P	Arlington Press, Inc	Arlington Press, Inc.
93241	Jones Apparel Group, Inc	Maxwell Shoe Company, Inc	Maxwell Shoe Company, Inc.
93244	LVI Holding N.V	Oglebay Norton Company	Global Stone Detroit Lime Company.
93248	Castle Harlan Partners III, L.P	Anthony Romeo	Miami Aircraft Support, Inc.
93250	Castle Harlan Partners III, L.P	Charles A. Micale	Miami Aircraft Support, Inc.
93251	Kleiner Perkins Caufield & Byers VIII, L.P.	NetSelect, Inc	NetSelect, Inc.
93261	Sprint Corporation	BellSouth Corporation	BellSouth Cellular Corp.
			BellSouth Mobility Inc.
			BellSouoth Personal Communications, Inc.
			Orlando CGSA, Inc.
93266	NCE Holdings, LLC	Decorative Concepts, Inc	Decorative Concepts, Inc.
93270	Certified Grocers of California, Ltd	United Grocers, Inc	United Grocers, Inc.
93274	Christoph Schoeller	PalEx, Inc	PalEx, Inc.
93275	Martin Schoeller	PalEx, Inc	PalEx, Inc.
93277	Ali M. Jaferi and Ather Jaferi (husband and wife).	Amerada Hess Corporation	Amerada Hess Corporation.
93278	ORIX Corporation	Bank One Corporation	Banc One Mortgage Capital Markets, LLC.
93292	Suez Lyonnaise des Eaux	Albert Frere	Anglo American Clays Corp.
			Calgon Corporation.
			Calgon InterAmerican Corp.
			ECC International Inc.
93293	Suez Lyonnaise des Eaux	Paul G. Desmarais	Anglo American Clays Corp.
			Calgon Corporation.
			Calgon InterAmerican Corp.
			ECC International Inc.
93324	MBNA Corporation	CCB Financial Corporation	Central Carolina Bank-Georgia.
93325	MBNA Corporation	First Commonwealth Financial Corporation.	First Commonwealth Financial Corporation.
93326	MBNA Corporation	The Peoples Holding Company	The Peoples Bank & Trust Company.
93327	Leggett & Platt, Incorporated	Sentinel Capital Partners, L.P	MET Displays, Inc.
		06/29/1999	
92875	GN Great Nordic AS	IFR Systems, Inc	PK Technology, Inc.
93095	Sara Lee Corporation	Dawson International PLC	J.E. Morgan Knitting Mills, Inc.
93191	Associate First Capital Corporation	BP Amoco p.l.c	BP Exploration and Oil, Inc.
93198	The Prudential Insurance Company of America.	Vector Securities International, Inc	Vector Securities International, Inc.
93247	SBC Communications Inc	MCI WorldCom, Inc	MCI WorldCom, Inc.
93256	Bank One Corporation	General Electric Company	GE Assets.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
93305	Sony Corporation	Steven Rifkind	Loud Records, LLC.
93310	Stagecoach Holdings plc	Coach USA, Inc	Coach USA, Inc.
93388	Sunrise Capital Partners, L.P	Items International, Inc	Items International, Inc.
	06/30/1999		
92413	Blackstone Capital Partners II Merchant Banking Fund LP.	USX Corporation	USS/Kobe Steel Company.
92414	Blackstone Capital Partner II Merchant Banking Fund LP.	Kobe Steel, Ltd	USS/Kobe Steel Company.
93062	Blue Cross & Blue Shield United of Wisconsin.	United Wisconsin Services, Inc.	United Wisconsin Services, Inc.
93136	SunGard Data Systems, Inc	Pentamation Enterprises, Inc	Pentamation Enterprises, Inc.
93137	UICI	Summit Ventures III, L.P	AMS Investment Group, Inc.
93160	DQE, Inc	FirstEnergy Corp	FirstEnergy Corp.
93225	Horizon Publications Inc	Hollinger Inc	American Publishing Company of Indiana. American Publishing Company of Ohio. APAC 90 Arkansas Holdings Inc. APC 1991 Arkansas Holdings Inc. APC Florida Holdings Inc. APC Missouri Holdings Inc. APC Pennsylvania Holdings Inc. APC Western Holdings Inc. Meridian Star Inc. The Naugutuck News Corporation.
93238	Windward Capital Partners II, L.P	Monitronics International, Inc	Monitronics International, Inc.
93260	BellSouth Corporation	Sprint Corporation	Sprintcom, Inc.
93279	Co-Steel Inc	Slater Steel Inc	Slater Steel Inc.
93286	Nationwide Electric, Inc	Thomas C. Neal	Neal Electric, Inc.
93287	Nationwide Electric, Inc	Casimier A. Wesolowski	Neal Electric, Inc.
93289	Lynch Corporation	Central Scott Telephone Company	Central Scott Telephone Company.
93291	VS&A Communications Partners II, L.P.	Harry F. Dubbs	Yellow Page One, Inc.
93295	Thayer Equity Investors IV, L.P	Power Circuits, Inc	Power Circuits, Inc.
93296	General Electric Company	Redon, Inc	Redon, Inc.
93300	Bell Microproducts, Inc	Future Tech International, Inc., as Debtor-in-Possession.	Future Tech International, Inc., as Debtor-in-Possession.
93302	Ford Motor Company	Automobile Protection Corporation—ARCO.	Automobile Protection Corporation—ARCO.
93308	Chemfab Corporation	UroQuest Medical Corporation	UroQuest Medical Corporation.
93309	ITT Industries, Inc	Derlan Industries Limited	K and M Electronics, Inc.
93312	Code, Hennessey & Simmons III, L.P	The United Company	Blue Ridge Industrial Supply Company. United Central Industrial Supply Company.
93315	VEBA A G	Combined Logistics International, Ltd	Combined Logistics International, Ltd.
93316	Code, Hennessey & Simmons III, L.P	The 1998 Confederation Trust	Oak Holdings Inc.
93323	National Fuel Gas Company	PennzEnergy Company	PennzEnergy Exploration and Production LLC.
93351	National-Oilwell, Inc	John R. Dupre, Jr	Dupre Supply Company, Dupre International, Inc.
93352	National-Oilwell, Inc	Comelius Dupre	Dupre Supply Company, Dupre International, Inc.
	07/01/1999		
93102	Ruddick Corporation	Hicking Pentecost PLC	Hicking Pentecost PLC.
93179	Morgan's Foods, Inc	Tricon Global Restaurants, Inc	Kentucky Fried Chicken of California, Inc. KFC National Management Company. Taco Bell Corporation. Taco Bell of California, Inc.
93216	Bruckmann, Rosser, Sherill & Co. II, L.P.	O'Sullivan Industries Holdings, Inc	O'Sullivan Industries Holdings, Inc.
93217	J. William Carter	Thomas B. Crowley, Jr	Crowley American Transport, Inc. Crowley Sea Wolf, Inc. Vessel Management Services, Inc.
93304	Jacqueline Kotts Special Trust	Superior Energy Services, Inc	Superior Energy Services, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
		07/02/1999	
93076	Merkert American Corporation	Richard R. Rogers	Richmont Marketing Specialists Inc.
93077	Richard R. Rogers	Merkert American Corporation	Merkert American Corporation.
93092	Litton Industries, Inc	Avondale Industries, Inc	Avondale Industries, Inc.
93187	GKN plc	John Patrick Gaffey	Michigan Sintered Metals, Inc., Metafusion, Inc. U.S. Energy Systems.
93188	GKN plc	Rajeev D. Ranadive	Michigan Sintered Metals, Inc., Metafusion, Inc. U.S. Energy Systems.
93204	Michael A. Singer	Synetic, Inc	Synetic, Inc.
93240	Intel Corporation	The Williams Companies, Inc	Williams Communications Group, Inc.
93290	McDonald's Corporation	Donatos Pizza, Inc	Donatos Pizza, Inc.
93299	Bernard J. Ebbers	Kimberly-Clark Corporation	Kimberly-Clark Worldwide, Inc., Kimberly-Clark Tissue Co.
93337	Lumbermens Mutual Casualty Company.	Markel Corporation	Calvert Insurance Company.
93343	El Paso Energy Corporation	Public Service Enterprise Group Incorporated.	PSEG Global New Jersey Incorporated, PSEG Newark Bay Inc.
93346	El Paso Energy Corporation	Richard H. & Carol Dean Hertzberg	ENPEX Corporation. ENPEX Newark Bay, Inc.
93347	Bowater Incorporated	Lee A. Thompson	Nuway Paper LLC.
93377	United International Holdings, Inc	@Entertainment, Inc	@Entertainment, Inc.
		07/06/1999	
93269	Welsh, Carson, Anderson & Stowe VIII, L.P.	BancTec, Inc	BancTec, Inc.
93314	SBC Communications, Inc	Cellular Communications of Puerto Rico, Inc.	Cellular Communications of Puerto Rico, Inc.
93349	AES Corporation	Michael R. Peevey	New Energy Ventures, Inc.
93350	AES Corporation	Unisource Energy Corp	New Energy Ventures, Inc.
93356	American Capital Strategies, Ltd	Edwin S. Toporek	MBT International, Inc.
93357	Rite-Aid Corporation	drugstore.com, inc	drugstore.com, inc.
93361	News Corporation	The Hearst Trust	Avon Books, Inc. William Morrow and Company, Inc. Wilmor Warehouse and Shipping Company, Inc.
93363	Waste Systems International, Inc	James Georgoulakos and Christine Georgoulakos (husband/wife).	Alpha Waste, Inc., Londonderry Associates, LP. Londonderry Turnpike Realty Trust, Rangeway Rd., LLC. Sterling Packaging, Inc., C&J Trucking Company, Inc.
93364	Waste Systems International, Inc	Charles and Cheryl M. Georgoulakos, Jr., (husband/wife).	Sterling Packaging Inc., C&J Trucking Company, Inc.
93392	CRH plc	Robert M. Thompson	Thompson-McCully Enterprises Co. Thompson-McCully Quarry Co., Advance Asphalt Plant Co.
93393	Vereniging Aegon	Vincent J. McGuinness, Sr. and Joy A. McGuinness.	Endeavor Management Co., Endeavor Group.
93400	Pearson plc	Kenneth R. Thomson (a Canadian citizen).	Muller Data Corp. Thomson Financial Securities Management.
93401	Craig O. McCaw	Speedus.com, Inc	Speedus.com, Inc.
93402	Journal Communications, Inc	John Conte Revocable Trust u/a dated 8–19–88.	Desert Empire Television Corporation.
93408	Forest Laboratories, Inc	Princes Gate Investors II, L.P	FRXC Company, Inc.
93409	Robert E. Rich, Jr	H.J. Heinz Company	H.J. Heinz Company.
93411	Mr. O. Gene Bicknell	Tricon Global Restaurants, Inc	Pizza Hut of America, Inc. Pizza Hut of Florida, Inc. Pizza Management, Inc. Red Raider Pizza Company.
93413	John D. Jackson	Tosco Corporation	Circle K Stores Inc.
93415	Lofland Acquisition, Inc	Raymond Steel Ltd	Hausman Corporation.
93416	National Bedding Company	Famco Holdings Limited	S–N Bedding Co., Inc.
93417	Bank of Montreal	Infoworld, Inc. and Midwest Web, L.L.C.	Infoworld, Inc. and Midwest Web, L.L.C.
93433	Washington Mutual, Inc	Long Beach Financial Corporation	Long Beach Financial Corporation.
93434	Brockway Moran & Partners Fund, L.P	Derlan Industries Limited	Derlan Inc.
93435	LG&E Energy Corp	CRC Holdings Corp	CRC Holdings Corp.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
93445	TPG Partners II, L.P	Motorola, Inc	SCG Holding Corporation.
		07/07/1999	
93265	AT&T Corp	Lightspan Partnership, Inc., (The)	Lightspan Partnership, Inc., (The).
93370	Providence Equity Partners III, LP	GlobeNet Communications Group Limited.	GlobeNet Communications Group Limited.
93371	Boston Ventures Limited Partnership V	GlobeNet Communications Group Limited.	GlobeNet Communications Group Limited.
93428	Ion Beam Applications S.A	SteriGenics International, Inc	SteriGenics International, Inc.
		07/08/1999	
93379	Terex Corporation	Powerscreen International plc	Powerscreen International plc.
		07/09/1999	
93195	Stichting Administratiekantoor van aandelen Koniklijke Wessa.	A–1 International Foods, Inc	A–1 International Foods, Inc.
93205	John H. Kang	Synetic, Inc	Synetic, Inc.
93271	Telefonos de Mexico, S.A. de C.V	Comm South Companies, Inc	Comm South Companies, Inc.
93283	EMI Group plc	Fuji Television Network, Incorporated	Windswept Pacific Entertainment Company.
93297	BSKH plc	Koninklijke Hoogovens N.V	Koninklijke Hoogovens N.V.
93311	Allianz Aktiengellschaft	OnStream International, Inc	OnStream International, Inc.
93334	Siemens Aktiengesellschaft	Omnipoint Corporation	Omnipoint Technologies III, Inc.
93355	SOFTBANK Corp	OptiMark Technologies, Inc	OptiMark Technologies, Inc.
93376	St. Laurent Paperboard, Inc	Chesapeake Corporation	Chesapeake Building Products Company LLC.
93386	National Council on Compensation Insurance, Inc.	Insurance Services Office, Inc	IDR Holdings, Inc.
93389	FS Equity Partners III, a Delaware Limited Partnership.	Greg Ryberg	R&H Maxxon, Inc.
93397	Motorola, Inc	Newco Joint Venture	Newco Joint Venture.
93398	Cisco Systems, Inc	Newco Joint Venture	Newco Joint Venture.
93399	Asarco Incorporated	Coeur d' Alene Mines Corporation	Coeur d' Alene Mines Corporation.
93403	Journal Communications, Inc	Sirpuhe Conte Living Trust	Desert Empire Television Corporation.
93404	Nordic Capital Holding SA	VEBA AG	Scansped Concord, N.V.
93412	Oak Hill Capital Partners, L.P	GTE Corporation	GTE Airfone Incorporated.
93414	Welsh, Carson, Anderson & Stowe VIII, L.P.	Westower Corporation	Westower Corporation.
		07/13/99	
93218	Noranda Inc	Falconbridge Limited	Falconbridge Limited.
93267	Welsh, Carson, Anderson & Stowe VIII, L.P.	Colonial Acquisition Corp	Colonial Acquisition Corp.
93268	WCAS Capital Partners III, L.P	Colonial Acquisition Corp	Colonial Acquisition Corp.
93328	Tower Automotive, Inc	Active Products Corporation	Active Products Corporation.
93329	Tower Automotive, Inc	Active Tool & Manufacturing Co., Inc	Active Tool & Manufacturing Co., Inc.
93360	Union Planters Corporation	Jeffrey L. Grayson	Capital Credit, Inc.
93380	Tyco International Ltd	Financial Security Services, Inc	FSS Security, Inc., Emergency Alert Protection, Inc.
93382	MCI WORLDCOM, Inc	SkyTel Communications, Inc	SkyTel Communications, Inc.
93383	The Rowe Companies	Storehouse, Inc	Storehouse, Inc.
93385	Brian L. Roberts	The Lightspan Partnership, Inc	The Lightspan Partnership, Inc.
93406	Bank Austria Aktiengesellschaft	Fineter S.A	Marley Holdings (USA) Inc.
93407	Koceram, N.V	Fineter S.A	Marley Holdings (USA) Inc.
93420	Leggett & Platt, Inc	Pulsar Plastics, Inc	Pulsar Plastics, Inc.
93425	Sierra Pacific Holding Company	Surdna Foundation, Inc	Surdna Foundation, Inc.
93432	Chase Manhattan Corporation	ShopNow.com, Inc	ShowNow.com, Inc.
93438	UBS AG	Lucent Technologies Inc	Lucent Technologies Consumer Products L.P.
93440	Richard L. Breakie and Lana J. Breakie (husband & wife).	Tricon Global Restaurants, Inc	Kentucky Fried Chicken of California, Inc. KFC National Management Company.
93441	Mace Security International, Inc	Excel Legacy Corporation	Millennia Car Wash, LLC.
93442	Excel Legacy Corporation	Mace Security International, Inc	Mace Security International, Inc.
93447	Vivendi S.A	Medimedia International Limited	Medimedia USA Inc.
93449	Bell Atlantic Corporation	Mark S. Chandler	METRO Technologies, Inc. Metro Technologies, Inc. Metropolitan Technologies Incorporated.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
93463	Presbyterian Retirement Communities, Inc.	Orlando Regional Healthcare System, Inc.	Carelink Partners, Inc., Lake Highlands Associates, Inc.
93470	Galen Partners III, L.P	Halsey Drug Co., Inc	Halsey Drug Co., Inc.
93477	J. Lauritzen Foundation (The)	Aktieselskabet Potagua	DanTransport Holding a/s.
93481	CEC Entertainment, Inc	Discovery Zone, Inc	Discovery Zone Licensing, Inc.
93537	Garban plc	Intercapital Group Limited	Intercapital plc.
	07/14/1999		
93372	Textron Inc	Robert B. McNab	Edwards & Associates, Inc.
93373	Textron Inc	James A. Wolfe	Edwards & Associates, Inc.
	07/15/1999		
93245	Paul G. Allen	Abry Broadcast Partners, III, L.P	Avalon Cable LLC. Avalon Cable of Michigan Holdings, Inc.
93276	Sprint Corporation	WBS America, LLC	WBS America, LLC.
93280	Lernout and Hauspie Speech Products N.V.	Fonix Corporation	fonix/ASI corporation.
93431	Unisys Corporation	PulsePoint Communications	PulsePoint Communications.
93482	KHPP Management LLC	Gary R. Hooker	Hooker industries, Inc.
93483	Yorkshire Water plc	Aquarion Company	Aquarion Company.
93485	Sysco Corporation	Richard A. Nicholas	Newport Meat Company, Inc.
93486	Richard A. Nicholas	Sysco Corporation	Sysco Corporation.
93487	Stewart Enterprises, Inc	Service Corporation International	Cemetery Services, Inc.
93491	Swiss Reinsurance Company	Alvin Randall Townsend, Sr	Pima Capital Co.
93494	Wind Point Partners III, L.P	Settlement dated 31st December 1985	Worldwide Sports & Recreation, Inc.
93495	Allianz Aktiengesellschaft	Life USA Holding, Inc	Life USA Holding, Inc.
93499	Glenn R. Jones	Hoak Communications Partners, LP	Broadcast Electronics, Inc.
93513	UBS AG, a Swiss Banking Corporation	Edison Project Inc. (The)	Edison Project Inc. (The).
93514	White Mountains Insurance Group, Inc	Robert Rothman	Consolidated International Group, Inc.
93515	Abbott Laboratories	Triangle Pharmaceuticals, Inc	Triangle Pharmaceuticals, Inc.
93522	The Seagram Company Ltd	Frederick W. Field	Interscope Records.
93528	The Allstate Corporation	Loews Corporation	Loews Corporation.
93531	DTE Energy Company	Covol Technologies, Inc	River Hill LLC.
93532	Countrywide Credit Industries, Inc	Associates First Capital Corporation	Balboa Insurance Company.
93538	Aviation Sales Company	Kitty Hawk, Inc	Kitty Hawk International, Inc., Kitty Hawk Aircargo, Inc.
93545	Wolseley plc	Jerome A. Thrall	Thrall Distribution, Inc.
93547	Thayer Equity Investors IV, L.P	Jack McDougall	Business Solutions Group LLC.
93555	ADC Telecommunications, Inc	Saville Systems PLC	Saville Systems PLC.
	07/16/1999		
93381	International Business Machines Corporation.	CIRRUS Logic, Inc	CIRRUS Logic, Inc.
93405	Madison Dearborn Capital Partners II, L.P.	Tru-Part Manufacturing Corporation	Tru-Part Manufacturing Corporation.
93421	Hispanic Broadcasting Corporation	Amador and Rosalie L. Bustos	Z-Spanish Media Corporation.
93422	Amador S. and Rosalie L. Bustos	Hispanic Broadcasting Corporation	Hispanic Broadcasting Corporation.
93439	Jim C. Walton	Hollinger Inc	Hollinger International Inc.
93454	American Securities Capital Partners II, L.P.	CPI Corp	CPI Corp.
93469	Commonwealth Principals LLC	Young & Rubicam Inc	Young & Rubicam Inc.
93489	Pacific Health Systems, Inc	Exempla, Inc	Mutual of Omaha of Colorado, Inc., d/b/a Antero Health Plans.
93490	PacifiCare Health Systems, Inc	Mutual of Omaha Insurance Company	Mutual of Omaha of Colorado, Inc. d/b/a Antero Health Plans.
93492	Blackstone Capital Partners III Merchant Banking Fund L.P.	Newco	Newco.
93501	Fresh America Corp	Rosecliff RCD Partners	FreshPoint Holdings, Inc.
93502	Rosecliff RCD Partners	Fresh America Corp	Fresh America Corp.
93507	Oak Investment Partners VIII, L.P	Advanced Radio Telecom Corp	Advanced Radio Telecom Corp.
93508	Qwest Communications International Inc.	Advanced Radio Telecom Corp	Advanced Radio Telecom Corp.
93519	Lear Corporation	Donnelly Corporation	Lear-Donnelly Overhead Systems LLC.
93524	Myers Industries, Inc	Richard A. Bonner	Dillen Products, Inc., Dillen Products Company, Ltd. Red Creek, Inc., North Shore Plastics, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
93530	IWKA Aktiengesellschaft	Household International, Inc	B & K Corporation.
93541	Freedom Securities Corporation	Gibraltar Securities Co	Gibraltar Securities Co.
93542	R.L. Polk & Co	Estate of Martha Blackburn	Carfax, Inc.
93544	Federated Department Stores, Inc	BrandDirect Marketing, Inc	BrandDirect Marketing, Inc.
93553	Virgil R. Williams	LawGibb Group, Inc	LawGibb Group, Inc.
93557	Tessenderlo Chemie S.A	Robert V. Kerley	Sundance Ag, Inc.
93559	Amazon.com, Inc	Sotheby's Holdings, Inc	Sotheby's Holdings, Inc.
93560	Koninklijke (Royal) Numico N.V	General Nutrition Companies, Inc	General Nutrition Companies, Inc.
93561	Dover Corporation	Lee Laser, Inc	Lee Laser, Inc.
93565	Building One Services Corporation	Randall R. Stutts	Sullivan Electric, Inc.
93567	Fox Paine Capital Fund, L.P	Maxxim Medical, Inc	Maxxim Medical, Inc.
93568	Datatec Limited	General Electric Company ("GE")	General Electric Company ("GE").
93573	Freedom Communications, Inc	William J. Curtis	CurtCo Freedom Group, L.L.C.
93577	National Equipment Services, Inc	Michael J. Plank	The Plank Company, L.P. and Plank Management, Inc.
93587	Jeffrey H. Smulyan	Press Communications, LLC	Press Communications, LLC.
93589	Cisco Systems, Inc	StratumOne Communications, Inc	StratumOne Communications, Inc.
93590	Welsh, Carson, Anderson & Stowe VIII, L.P.	Alliance Data Systems Corporation	Alliance Data Systems Corporation.
		07/19/1999	
93339	Ametek, Inc	Atlantic Equity Partners, L.P	Controls Holding Corporation.
93369	MotivePower Industries, Inc	Westinghouse Air Brake Company	Westinghouse Air Brake Company.
93496	Seiko Instruments Inc	SII Marketing International, Inc	SII Marketing International, Inc.
93505	Patrick J. McGovern	Pearson plc	MacMillan General Reference USA Inc.
93516	Security First Technologies Corporation.	Edify Corporation	Edify Corporation.
93517	DLJ Merchant Banking Partner II, L.P	Hydrant Acquisition Corp	Hydrant Acquisition Corp.
93518	DLJ Merchant Banking Partners II, L.P	Tyco International Ltd	Grinnell Corporation. J.B. Smith Mfg. Co. Mueller Holdings Corp. Tyco International of Canada Ltd.
93534	John W. Kluge	AboveNet Communications, Inc	AboveNet Communications, Inc.
93569	Dominion Fund III, a California Limited Partnership.	Mortgage.com, Inc	Mortgage.com, Inc.
93574	Owens & Minor, Inc	Medix, Inc	Medix, Inc.
93591	Erik D. Prince	Advance Mixer, Inc	Advance Mixer, Inc.
93594	Charterhouse Equity Partners III, L.P	W.R. Grace & Co	Cross Country Staffing.
93599	W.R. Grace & Co	Nestor Healthcare Group plc	Nestor-BNA Holdings Corp.
93605	National Data Corporation	Medscape, Inc	Medscape, Inc.
93609	Xerox Corporation	Danka Business Systems, plc	Danka Holding Company. Danka Office Imaging Company.
93611	Joseph Littlejohn and Levy Fund II, L.P.	William A. Schwartz	Blackstone Company, Inc.
93616	Hilite Holdings L.L.C	SPX Corporation	SPX Corporation.
93618	Anacomp, Inc	Litton Industries, Inc	Litton Adesso Software, Inc.
93619	Glynwed International plc	Victory Refrigeration Company LLC	Victory Refrigeration Company LLC.
93620	Wolters Kluwer nv	Bankers Systems, Inc	Bankers Systems, Inc.
93621	KRSM Management, LLC	Nancy's Specialty Foods, Inc	Nancy's Specialty Foods, Inc.
93648	Grotech Partners V, L.P	Yorkshire Global Restaurants, Inc	Yorkshire Global Restaurants, Inc.
93662	ConAgra, Inc	Robert N. Wiviott	Choice One Foods. Compton Investors, L.L.C.
93663	Robert N. Wiviott	ConAgra, Inc	ConAgra, Inc.
93677	Michael S. Wilner	Insight Communications Company, Inc	Insight Communications Company, Inc.
93678	Sidney R. Knafel	Insight Communications Company, Inc	Insight Communications Company, Inc.
93679	Vestar Capital Partners III, L.P	Insight Communications Company, Inc	Insight Communications Company, Inc.
		07/20/1999	
93647	Candover Investments plc	Union Miniere, S.A	Diamant Boart S.A.
		07/21/1999	
93384	CEA Capital Partners USA, L.P	Mid-Missouri Telephone Company	Mid-Missouri Telephone Company.
93597	Pinnacle Systems, Inc	Hewett-Packard Company	Video Communications Division.
93601	Ferro Corporation	Cookson Group plc	TAM Ceramics, Inc.
93607	Citizens Utilities Company	GTE Corporation	Contel of Minnesota, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
			GTE California Incorporated.
			GTE West Coast Incorporated.
93608	MDU Resources Group, Inc	Loy S. and Marie Clark	Loy Clark Pipeline Co.
93612	John A. Porter	ADCO Investors, L.P	Acoustics Development.
93658	Transit Group, Inc	Frank Mitchell	MDR Cartage, Inc.
93659	Transit Group, Inc	Bob Riley	MDR Cartate, Inc.
93664	Dimeling, Schreiber and Park Reorganization Fund II.	Renaissance Cosmetic, Inc	Renaissance Cosmetic, Inc.
		07/22/1999	
93554	James M. Williams, Jr	LawGibb Group, Inc	LawGibb Group, Inc.
93558	Supervalu Inc	Richfood Holdings, Inc	Richfood Holdings, Inc.
		07/23/1999	
93147	O. Burton Smith	L.O.R. Inc	L.O.R. Inc.
93510	Blackstone Capital Partners III Merchant Banking Fund L.P.	Allied Waste Industries, Inc	Allied Waste Industries, Inc.
93511	Blackstone Offshore Capital Partners III L.P.	Allied Waste Industries, Inc	Allied Waste Industries, Inc.
93512	Blackstone Family Investment Partnership L.P.	Allied Waste Industries, Inc	Allied Waste Industries, Inc.
93546	Canaan Equity Offshore C.V	Mortgage.com, Inc	Mortgage.com, Inc.
93548	Apollo Investment Fund IV, L.P	Allied Waste Industries, Inc	Allied Waste Industries, Inc.
93549	Apollo Overseas Partners IV, L.P	Allied Waste Industries, Inc	Allied Waste Industries, Inc.
93550	Apollo Overseas Partners Fund III, L.P	Allied Waste Industries, Inc	Allied Waste Industries, Inc.
93551	Apollo U.K. Partners III, L.P	Allied Waste Industries, Inc	Allied Waste Industries, Inc.
93579	Managed Health Care Associates, Inc	Three Cities Offshore II C.V	COHR, Inc.
93623	Ares Leveraged Investment Fund II, L.P.	Allied Waste Industries, Inc	Allied Waste Industries, Inc.
93729	Wayne B. Brown	Tricon Global Restaurants, Inc	Taco Bell Corp.
		07/26/1999	
92457	Intertape Polymer Group Inc. (a Canadian company).	Lynch Corporation	Central Products Company.
			Spinnaker Electric Tape Company.
93902	SCANA Corportion	ITC♪DeltaCom, Inc	ITC♪DeltaCom, Inc.
93366	Arnold Simon	Michele Bohbot	Lola, Inc.
93500	The Albert Fisher Group PLC	Fresh America Corp	Fresh America Corp.
93593	Hellman & Friedman Capital Partners II, L.P.	Larkin-Pluznick-Larkin Company	Larkin-Pluznick-Karkin, LLC.
93504	Telefonos de Mexico, S.A. de C.V	SBC Communications, Inc	SBC International Puerto Rico, Inc.
93509	UBS AG	ETM Entertainment Network, Inc	ETM Entertainment Network, Inc.
93523	John M. Rudey	Boise Cascade Corporation	Boise Cascade Corporation.
93525	NovaCare, Inc	Unified Management of R.I., Inc	Unified Management of R.I., Inc.
93533	NovaCare, Inc	Unified Management Corporation	Unified Management Corporation.
93570	Michel Akkermans	Security First Technologies Corporation.	Security First Technologies Corporation.
93571	The Atlantic Foundation	Security First Technologies Corporation.	Security First Technologies Corporation.
93572	GAP Coinvestment Partners, L.P	Security First Technologies Corporation.	Security First Technologies Corporation.
93578	Waste Management, Inc	Guillermo M. Torres	Serrot Acquisition Corp.
93503	Mediacom LLC	Trusts under the Will dated June 3, 1982 of Roger E. Zylstra.	Zylstra Communications Corporation.
93625	Brentwood Associates Buyout Fund II, L.P.	Aurora Equity Partners II, L.P	QDSP Holdings, Inc.
93626	Aurora Equity Partners II, L.P	Brentwood Associates Buyout Fund II, L.P.	City Truck Holdings, Inc.
93639	Reckson Service Industries, Inc	Alliance National Incorporated	Alliance National Incorporated
93644	H&R Block, Inc	McGladrey & Pullen, LLP	McGladrey & Pullen, LLP.
93650	HEICO Corporation	Thermal Structures, Inc	Thermal Structures, Inc.
		07/27/1999	
92073	Allied Waste Industries, Inc	Browning-Ferris Industries, Inc	Browning-Ferris Industries, Inc.
93592	Northeast Utilities	Dennis Morrissette	Denron Plumbing & HVAC, Inc.
93596	The Seagram Company Ltd	The Seagram Company Ltd	Rush Associates Labels Recordings.
93615	Avnet, Inc	Marshall Industries	Marshall Industries.
93617	Schroder Ventures Italian Fund II	Imation Corp	Ferrania USA, Inc.
93630	Hispanic Broadcasting Corporation	SBT Communications Statutory Trust	Delaware Radio, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
93653	SAirGroup	Alpha Airports Group Plc	Alpha U.S. Holdings, Inc.
93655	S3 Incorporated	Diamond Multimedia Systems, Inc	Diamond Multimedia Systems, Inc.
93656	Benchmark Electronics, Inc	J.M. Huber Corporation	AVEX Electronics, Inc.
93660	Golden Investment Company, L.L.C	Carlos Bailey and Brenda Bailey (husband and wife).	Great Western Products Company, Inc.
93661	General Electric Company	Comdisco, Inc	Comdisco, Inc.
93667	Softbank Corp	Joseph D. Mansueto	Morningstar, Inc.
93668	Koninklijke Philips Electronics N.V	J.W. Childs Equity Partners L.P	Beltone Electronics Corporation.
93669	Innovex, Inc	ADFlex Solutions, Inc	ADFlex Solutions, Inc.
93670	Glynwed International plc	Invaco Inc	IPEX Inc.
93671	Glynwed International plc	Scepter Holdings Inc	IPEX Inc.
93675	Capital Z Financial Services Fund, II, L.P.	U.S.I. Holdings Corporation	U.S.I. Holdings Corporation.
93691	Oak Hill Capital Partners, L.P	Leslie B. Otten	American Skiing Company.
93723	David Paradise	Tricon Global Restaurants, Inc	Taco Bell Corp.
	07/28/1999		
93632	MWA, P.C	MedPartners, Inc	MedPartners Acquisition Corporation.
93635	The Veritas Capital Fund, L.P	Blackstone Capital Partners II Merchant Banking Fund L.P.	Bar Technologies, Inc.
93654	RMC Group p.l.c	Timothy B. G. Youngquist	Youngquist Brothers Equities. Youngquist Brothers Rock, Inc.
93682	Wind Point Partners III, L.P	Robert A. Bosco	Anstro Manufacturing, Inc.
93683	Heritage Fund, II, L.P	Avista Corp	Store Fixtures Group.
93684	Thomas H. Lee Equity Fund IV, L.P	Vision Twenty-One, Inc	The Complete Optical Laboratory Ltd., Corp.
93685	Meadowbrook Insurance Group, Inc	TPA Associates, Inc	TPA Associates, Inc.
93686	Metals USA, Inc	Mr. Barry Wolf	Wolf Brothers, Inc.
93689	Lucent Technologies, Inc	Lucent Technologies, Inc	Cirrus Logic, Inc.
93700	Wallace K. Tsuha, Jr	SmartFlex Systems, Inc	SmartFlex Systems, Inc.
93701	TCV III (Q), L.P	eMachines, Inc	eMachines, Inc.
93702	Melbourne Internal Medicine Associates, P.A.	MedPartners, Inc	MedPartners, Inc.
93712	Glen A. Taylor	FMCI Corporation	FMCI Corporation.
93714	Health Care Horizons, Inc	Foundation Health Systems, Inc	QualMed Plans for Health, Inc.
93715	Samaritan Health Services, Inc	FirstCare Health Foundation	FirstCare Health Foundation
93718	GTCR Fund VI, L.P	Metamor Worldwide, Inc	Metamor Software Solutions, Inc.
93721	Electronics for Imaging, Inc	Management Graphics, Inc	Management Graphics, Inc.
93726	Madison Dearborn Capital Partners III, L.P.	Ruth U. Fertel, Inc	Ruth U. Fertel, Inc.
93751	Utilicorp United, Inc	Quanta Services, Inc	Quanta Services, Inc.
93771	RMC Group. p.l.c	Harvey B. Youngquist	Youngquist Brothers Equities. Youngquist Brothers Rock, Inc.
	07/29/1999		
91095	Koninklijke Philips Electronics NV	Micrion Corporation	Micrion Corporation.
93466	General Dynamics Corporation	GTE Corporation	GTE Government Systems Corp.
93595	Genesys, S.A	The Williams Companies, Inc	Conference Acquisition Corporation.
	07/30/1999		
93475	Ashland Inc	Mark Buster	B&H Bridge, Inc. Buster Concrete and Materials, Inc. Buster Paving Company, Inc. Progressive Contracting, Inc.
93583	WPS Resources Corporation	PP&L Resources, Inc	Lady Jane Collieries, Inc. PP&L, Inc.
93651	Kali P. Chaudhuri, M.D	MedPartners, Inc	MedPartners, Inc.
93666	Paul G. Allen	Falcon Holding Group, L.P	Falcon Communications, L.P.
93673	TCV II (Q), L.P	Mortgage.com, Inc	Mortgage.com, Inc.
93674	Technology Crossover Ventures II, L.P	Mortgage.com, Inc.	Mortgage.com,Inc
93697	Scottish Annuity & Life Holding, Ltd	Mrs. Amy Regan	Harbourton Reassurance, Inc.
93716	Atlantic Equity Partners International II, L.P.	Ronald L. Melby and Marilyn L. Melby	Metal Form, Inc.
93734	Accor S.A. (a French company)	Red Roof Inn, Inc	Red Roof Inn, Inc.
	08/02/1999		
93396	Xilinx, Inc	Koninklijke Philips Electronics NV	Philips Semiconductor, Inc.
93749	MDU Resources Group, Inc	Billy G. & Louise Yarbrough	Solano Concrete, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
		08/03/1999	
93631	The Bank of New York Co., Inc	The Industrial Bank of Japan, Limited	IBJ Whitehall Bank & Trust Company.
93687	Sumida Electric Co., Ltd	C.P. Clare Corp	Clare EMG Inc.
93696	KKR 1996 Fund L.P	Birch Telecom, Inc	Birch Telecom, Inc.
93706	Thomas T. Gore, an individual	Timeplex, Inc	Timeplex, Inc.
93707	Mail-Well, Inc	Russell C. Gesme	Direct Graphics, Inc.
93709	Richard C. Rainwater	GAINSCO, Inc	GAINSCO, Inc.
93711	Hajoca Corporation	Howard Weinstein	Weinstein Supply Corp.
93713	General Electric Company	Trailer Investors Partnership	Green Financial.
93728	Vestar Equity Partners, L.P	MotivePower Industries, Inc	MotivePower Industries, Inc.
93731	William E. Kassling	MotivePower Industries, Inc	MotivePower Industries, Inc.
93737	Vicat, S.A	Acadia Partners, L.P	United Concrete Service Corp. United Ready Mix Concrete Corp.
93738	Royal Bank of Canada	Judith M. Van Kampen	Marseille Brick Venture, L.P.
93741	V. Prem Watsa	Zenith National Insurance Corp	Zenith National Insurance Corp.
93745	A.H. Belo Corporation	MAC America Communications, Inc	KASW–TV, Arizona New Channel, AZFamily.com. KTVK–TV.
93759	Paul M. Montrone	Jenoptik AG	Krone AG.
93762	The DII Group, Inc	Thomas and Susie C. Albright	Circuit Board Assemblies, Inc. EMCI, Inc.
93792	Invensys plc	Ralph G. Ridenour and Isobel J. Ridenour.	Universal Enterprises Inc.
		08/04/1999	
93769	Oak Hill Capital Partners, L.P	Caribbean Restaurants Holdings, Inc	Caribbean Restaurants Holdings, Inc.
93822	Monitor Clipper Equity Partners, L.P	Corporate Wings, Inc	Corporate Wings, Inc.
		08/05/1999	
93418	Northern States Power Company	Niagara Mohawk Holdings, Inc	Niagara Mohawk Power Corp.
93479	Giant Eagle, Inc	Russo's, Inc	Russo's, Inc.
93584	Charterhouse Equity Partners III, L.P	OnStream International, Inc	OnStream International, Inc.
93622	VoiceStream Wireless Corp	Omnipoint Corp	Omnipoint Corp.
93710	American Tower Corp	Everett R. Dobson Irrevocable Family Trust.	Dobson Tower Co.
93727	Cox Enterprises, Inc	Ruth I. Kolpin	Southwest Missouri Cable TV, Inc.
93739	Celadon Group, Inc	Jerry Closser	Zipp Express, Inc.
93742	Blackstone Offshore Capital Partners, II L.P.	Blackstone Capital Partners II Merchant Banking Fund L.P.	Bar Technologies, Inc.
93752	Quanta Services, Inc	Billy Jones	Crown Fiber Communications, Inc.
93766	Briggs & Stratton Corp	Metal Technologies, Inc	Metal Technologies, Inc.
93767	Metal Technologies, Inc	Briggs & Stratton Corp	Briggs & Stratton Corp.
93768	E. Andrew Harvey	Bunzl plc	G.B. Goldman Paper Co. The Paper Group, Inc.
93773	Enron Corp	The United Company	The United Company.
93777	Reservoir Capital Partners, L.P	Orange-co, Inc	Orange-co, Inc.
93778	David Fuchs	Century Business Services, Inc	Century Business Services, Inc.
93779	Century Business Services, Inc	David Fuchs	Tri-Tek Information Services, Inc.
93780	MascoTech, Inc	Windfall Products, Inc	Windfall Products, Inc.
93784	AMSTED Industries Inc	Peter J. Seippel	Advance Products Corp.
93787	Acosta-PMI, In.	MAI-Alper, Inc	MAI-Alper, Inc.
93788	Continuum Health Partners, Inc	New York Eye and Ear Infirmary	New York Eye and Ear Infirmary.
93789	Boyd Gaming Corp	Blue Chip Casino, Inc	Blue Chip Casino, LLC.
93791	C.F. Sauer Company (The)	Lucia M. Cleveland	The Spice Hunter.
93794	Fresenius Aktiengesellschaft	Henry Ford Health System	Bay Area Regional Dialysis Partnership.
93796	PP&L Resources, Inc	The Montana Power Co	The Montana Power Company.
93798	The Allstate Corp	American Heritage Life Investment Corp.	American Heritage Life Investment Corp.
93799	ACX Technologies, Inc	Crown Cork & Seal Company, Inc	Golden Aluminum Company.
93800	Bouygues S.A	Acadia Partners, L.P	United Building Materials Corp.
93801	Rockwell International Corp	Mark Hanrahan	Intertrade Limited.
93803	Leggett & Platt, Inc	Stephen Boas	Design Fabricators Inc.
93804	Legget & Platt, Inc	Robert Coleman	Design Fabricators Inc.
93805	Bell & Howell Company	Infonautics, Inc	Infonautics, Inc.
93806	John Hancock Mutual Life Insurance Company.	Chesapeake Corporation	Chesapeake Forest Products Company LLC.
93807	Willis Stein and Partners, L.P	Kevin West and Colleen Gordon (A Married Couple).	Armed Forces Communications, Inc. d/b/a Maket Place.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
93809	U.S. Bancorp	Associate First Capital Corp	Voyager Fleet Systems, Inc.
93812	PP&L Resources, Inc	Enron Group	Portland General Electric Co.
93814	PP&L Resources, Inc	Puget Sound Energy, Inc	Puget Sound Energy, Inc.
93815	Vivendi S.A	GPU, Inc	York Haven Power Company, GPU Generation, Inc.; GPU, Inc.
93816	Code Hennessy & Simmons III, L.P	Peter Howard	Jakel Holding, Corp.
93817	Southdown, Inc	American Industrial Partners Capital Fund, L.P.	SMI Holding, Inc.
93826	Warburg, Pincus Ventures, L.P	The St. Paul Companies, Inc	Elite Premium Services, Inc. St. Paul Fire and Marine Insurance. Westchester Premium Acceptance. Westchester Premium Acceptance of California, Inc.
93841	CenturyTel, Inc	GTE Corp	GTE Southwest Inc., GTE Arkansas Inc., GTE Midwest Inc.
93852	COGNICASE, Inc	Arnold Pellegrinelli	Prism Consulting Services, Inc.
93853	COGNICASE, Inc	Paul Rothstein	Prism Consulting Services, Inc.
		08/06/1999	
93613	Devon Delaware Corp	PennzEnergy Co	PennzEnergy Co.
		08/09/1999	
93694	Waste Management, Inc	Sanitary Services Corp	Sanitary Services Corp.
93763	TPG Partners II, L.P	Magellan Health Services, Inc	Magellan Health Services, Inc.
93765	Cumulus Media Inc	M&F Calendar Holdings, L.P	Calendar Broadcasting, Inc.
93772	iVillage Inc	Lamaze Publishing Company, Inc	Lamaze Publishing Company, Inc.
93786	Boise Cascade Corp	Furman Lumber, Inc	Furman Lumber, Inc.
93797	Royal & Sun Alliance Insurance Group plc.	Orion Capital Corp	Orion Capital Corp.
93810	Terex Corp	Raytheon Co	Cedarapids, Inc.
93820	Draka Holding N.V	Siemens Aktiengesellschaft	Siecor Operations, LLC.
93821	Draka Holding H.V	Corning Inc	Siecor Operations, LLC.
93824	Norwood Promotional Products, Inc	R.L. Polk & Co	AUI Acquisition Corp.
93835	Solectron Corp	Trimble Navigation Limited	Trimble Navigation Limited.
93837	Code, Hennessy & Simmons III, L.P	Richard P. Dickson	Alternative Distribution Systems, Inc.
93844	John J. Rigas	John J. Rigas	Olympus Communications, L.P.
93845	Dover Corp	Charles A. Elliott	Crenlo, Inc.
93847	Gordon L. Stewart	AutoNation, Inc	Hoover Toyota, Inc.
93854	Louisiana-Pacific Corp	Le Groupe Forex, Inc	Le Groupe Forex Inc.
93857	FirstGroup plc	Bruce Transportation Group, Inc	Bruce Transportation Group, Inc.
93858	SENIOR plc	Jimmy W. Green	Texloc, Inc., Texloc Hose & coupling, Inc. Texmelt, Inc., Texpace, Inc.
93859	Clear Channel Communications, Inc	Jeffrey E. Trumper	KHTZ Broadcast, L.P. KHTZ License L.P. KLSK Broadcast L.P. KLSK License L.P. KTEG Broadcast L.P. KTEG License L.P. KZRR Broadcast L.P. KZRR License L.P. KZSS Broadcast L.P. KZSS License L.P.
93869	Wild Oats Markets, Inc	Henry's Marketplace, Inc	Henry's Marketplace, Inc.
93870	Marketing Services Group, Inc	Grizzard, Advertising Inc	Grizzard Advertising, Inc.
93877	Titus Interactive SA	Interplay Entertainment Corp	Interplay Entertainment Corp.
93883	Fedders Corp	Trion, Inc	Trion, Inc.
93893	Curtiss-Wright Corp	Allegheny Teledyne, Inc	Teledyne Fluid Systems, Teledyne Industries, Inc.
93898	E*Trade Group, Inc	TIR Holdings Limited	TIR Holdings Limited.
93901	Fitness Holdings, Inc	Q Clubs, Inc	Q Clubs, Inc.
93905	SSL International plc	Mr. Joel E. Bickell	Silipos, Inc.
93913	Smith & Nephew plc	Exogen, Inc	Exogen, Inc.
93914	LKQ Corp	Joseph Simone	Hunts Point Auto Wreckers, Inc.
93915	France Telecom	NTL, Inc	NTL, Inc.
93919	Advanced Communications Group, Inc	YPtel Corp	YPtel Corp.
93921	General Electric Co	Telescan, Inc	Telescan, Inc.
93934	AnswerThink Consulting Group, Inc	Think New Ideas, Inc	Think New Ideas, Inc.
93937	Sonat, Inc	Sonat, Inc	Sonat Marketing Company L.P. Sonat Power Marketing L.P.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
93940	GRC International, Inc	Gerald R. McNichols	Management Consulting & Research, Inc.
93954	Catalytica, Inc	Wyckoff Chemical, Inc	Wyckoff Chemical, Inc.
93958	Ragione di Gilberto Benetton e C.S.A.p.A.	Host Marriott Services Corp	Host Marriott Services Corp.
		08/10/1999	
93753	Billy Jones	Quanta Services, Inc	Quanta Services, Inc.
93840	IBP, Inc	Thorn Apple Valley, Inc, debtor-in-possession.	Thorn Apple Valley, Inc.
		08/11/1999	
92696	Allied Waste Industries, Inc	Manafort Brothers, Inc	Connecticut Waste Processing.
93680	Stronach Trust	Orient Corp	Gulfstream Park Racing Association, Inc.
93754	American Tower Corp	UniSite, Inc	UniSite, Inc.
93761	Toys ''R'' Us, Inc	Pegasus Related Partners, L.P	Imaginarium Toy Centers, Inc.
93790	James R. Leininger, M.D	Western Resources, Inc	Protection One Alarm Monitoring, Inc.
93802	Buhrmann NV	Corporate Express, Inc	Corporate Express, Inc.
93829	Jack P. Cook, Jr	Health-Chem Corp	Hercon Environmental Corp. Herculite Products, Inc.
93839	Gilbert Global Equity Partners, L.P	Advanced Communications Group, Inc	Feist Long Distance Service, Inc. Firstel, Inc. Telecom Resources, Inc. Valu-Line of Longview, Inc.
93860	Tellabs, Inc	NetCore Systems, Inc	NetCore Systems, Inc.
93864	Cincinnati Bell Inc	IXC Communications, Inc	IXC Communications, Inc.
93889	Bruckmann, Rosser, Sherill & Co., L.P	Foundation Health Systems, Inc	Foundation Health Systems, Inc.
93923	Sister of Providence, Sacred Heart Providence.	Little Company of Mary Health Services, American Province.	Little Company of Mary Health Services, American Province.
93938	Snap-on Inc	Sandvik AB	SB Holding B.V.
93941	Gerald R. McNichols	GRC International, Inc	GRC International, Inc.
		08/13/1999	
93690	Friede Goldman International, Inc	Halter Marine Group, Inc	Halter Marine Group, Inc.
93699	VA Technologie AG	Kvaerner ASA	Kvaerner USA, Inc.
93811	AlliedSignal Inc	Johnson Matthey Public Limited Co	JM Electronics Holding Company, Inc.
93827	CMGI, Inc	Zoom Newco Inc	Zoom Newco Inc.
93828	Compaq Computer Corp	Zoom Newco Inc	Zoom Newco Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 99–22673 Filed 8–31–99 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Baseline Survey of Youth for the Federal Evaluation of Initiatives Funded Under Section 510 of the Maternal and Child Health Block Grant Program

The Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104–193) established Section 510 of the Maternal and Child Health Block Grant Program, the purpose of which is to support state efforts promoting abstinence only education. The Balanced Budget Act of 1997 (P.L. 105–33) established a requirement to ''evaluate programs under Section 510.'' This proposed information collection will gather baseline information for the evaluation—NEW—*Respondents:* Individuals; *Number of Respondents:* 7,000; *Average Burden per Response:* .75 hours; *Burden:* 5,250 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained

by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC, 20201. Written comments should be received within 30 days of this notice.

Dated: August 23, 1999.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 99–22681 Filed 8–31–99 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee on Mental Retardation; Notice of Meeting

AGENCY: President's Committee on Mental Retardation. Administration for Children and Families, DHHS.

ACTION: Notice of meeting.

DATES: The meeting of the President's Committee on Mental Retardation will be held on Thursday, September 16, 1999, from 10:30 a.m. to 5 p.m., and on Friday, September 17, 1999, from 9 a.m. to 12 noon.

ADDRESSES: The meeting will be held in the Madison Hotel, 15th and M Streets, NW., Washington, DC 20001. Full Committee Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All meeting sites are barrier free.

AGENDA: The Committee plans to discuss critical issues concerning Federal Policy, Federal Research and Demonstration, State Policy Collaboration, Minority and Cultural Diversity and Mission and Public Awareness, relating to individuals with mental retardation.

FOR FURTHER INFORMATION CONTACT: Jane L. Browning, Executive Director, President's Committee on Mental Retardation, 370 L'Enfant Promenade, SW., Washington, DC 20447, (202) 619–0634.

SUPPLEMENTARY INFORMATION: The PCMR acts in an advisory capacity to the President and the Secretary of the U.S. Department of Health and Human Services on a broad range of topics relating to programs, services, and supports for persons with mental retardation. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs and supports for persons with mental retardation, and for reviewing legislative proposals that impact the quality of life that is experienced by citizens with mental retardation and their families.

Dated: August 26, 1999.

Laverdia T. Roach,

Special Assistant to the Executive Director, PCMR.

[FR Doc. 99–22784 Filed 8–31–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Reallotment of Funds, for FY 1998 Low Income Home Energy Assistance Program (LIHEAP)

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Notice of determination concerning funds available for reallotment; correction.

SUMMARY: In accordance with section 2607(b)(1) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 8621 et seq.) as amended, a notice was published in the **Federal Register** on July 30, 1999 announcing the Secretary's final determination regarding funds available for reallotment. The document contained incorrect reallotment data.

FOR FURTHER INFORMATION CONTACT: Janet Fox, Director, Division of Energy Assistance, Office of Community Services, 370 L'Enfant Promenade, SW, Washington, DC 20447; telephone number (202) 401–9351.

Correction

In the **Federal Register** of July 30, 1999, in FR Doc. 99–19601, on page 41435, in the first column, the first paragraph of the ''Summary'' caption, correct the last sentence to read:

Therefore, the amount of funds available for reallotment is $2,207,431.00.

Dated: August 26, 1999.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 99–22785 Filed 8–31–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0721]

Agency Information Collection Activities; Announcement of OMB Approval; Premarket Approval of Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Premarket Approval of Medical Devices'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 27, 1999 (64 FR 4112), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0231. The approval expires on July 31, 2001. A copy of the supporting statement for this information collection is available on the Internet at ''http://www.fda.gov/ohrms/dockets''.

Dated: August 26, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–22721 Filed 8–31–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–2908]

The Goodyear Tire & Rubber Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The Goodyear Tire & Rubber Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of piperylene/2-methyl-2-butene/alpha-methylstyrene terpolymers for use in the preparation of can end cements intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4685) has been filed by The Goodyear Tire & Rubber Co., c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) to provide for the safe use of piperylene/2-methyl-2-butene/alpha-methylstyrene terpolymers for use in the preparation of can end cements intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: August 12, 1999.

Laura M. Tarantino,

Deputy Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–22719 Filed 8–31–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Feed Safety and Compliance With Animal Protein Prohibited in Ruminant Feed Rules Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) in cooperation with the California Department of Food and Agriculture (CDFA) and the Association of American Feed Control Officials (AAFCO), is announcing a public workshop for training regulatory officials and the feed industry. The workshop is designed to increase participants' understanding of the regulatory changes that affect the feed industry. The topics to be discussed relate to feed safety and include the animal protein in ruminant feed rule, veterinary feed directives, medicated feed good manufacturing practices, feed contamination, and antibiotic drug resistance.

Date and Time: The workshop will be held on September 28, 1999, from 8 a.m. to 5 p.m., and on September 29, 1999, from 8:30 a.m. to 3:30 p.m.

Location: The workshop will be held at the Delta King Hotel, 1000 Front St., Sacramento, CA, 916–444–5464. Persons needing hotel rooms must request the special rate for the AAFCO/CDFA workshop. A special rate is available until September 7, 1999.

Contact: For further information including a registration form: Steve Wong, Branch Chief, CDFA, 1220 N St., rm. A–472, Sacramento, CA 95814–5621, 916–654–0574, FAX 916–653–2407,

For general information: Karen L. Robles, Food and Drug Administration, 801 I St., Sacramento, CA 95814, 916–498–6400, ext. 14.

Registration: Advanced registration is required. Please register on or before September 10, 1999. There is a $50 registration fee which you should make payable to the Association of American Feed Control Officials (AAFCO). The registration fee will cover the cost of the facility. Send your registration fee and completed registration form to Feed Safety/BSE Training, c/o CDFA, Attn. Office Supervisor, Feed Inspection Program, 1220 N St., rm. A-472, Sacramento, CA 95814–5621. Space is limited, therefore, you are encouraged to register early.

If you need special accommodations due to a disability, please contact Steve Wong at least 7 days in advance.

Dated: August 25, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–22680 Filed 8–31–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Neurological Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Neurological Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 16, 1999, 11 a.m. to 6 p.m., and September 17, 1999, 8:30 a.m. to 3:30 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Janet L. Scudiero, Center for Devices and Radiological Health (CDRH) (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184, ext. 176, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12513. Please call the Information Line or access the World Wide Web at ''http://www.fda.gov/cdrh/upadvmtg.html'' for up-to-date information on this meeting.

Agenda: On September 16, 1999, the committee will discuss and make recommendations on: (1) The draft guidance entitled ''Guidance Document for Dura Substitute Devices,'' and (2) the classification of processed human dura mater. FDA notes that the guidance entitled ''Guidance for the Preparation of a Premarket Notification Application for Processed Human Dura Mater,'' which related to the classification of processed human dura mater, became effective on July 31, 1999.

On September 17, 1999, the committee will discuss and make recommendations on: (1) The draft guidance entitled ''Guidance Document

for Neurological Embolization Devices,'' and (2) the reclassification of the totally implanted spinal cord stimulator. Single copies of the guidance and the draft guidances are available to the public by calling 1–800–899–0381 or 301–827–0111 and requesting CDRH Facts-on-Demand by assigned document number, or the documents may be obtained on the Internet at the CDRH website as follows: ''Guidance Document for Dura Substitute Devices,'' Facts-on-Demand document number 1152, or ''http://www.fda.gov/cdrh/ode/1152.pdf''; ''Guidance for the Preparation of a Premarket Notification Application for Processed Human Dura Mater,'' Facts-on-Demand document number 054, or ''http://www.fda.gov/cdrh/ode/054.pdf''; and ''Guidance Document for Neurological Embolization Devices,'' Facts-on-Demand document number 1151, or ''http://www.fda.gov/cdrh/ode/1151.pdf''.

Procedure: On September 16, 1999, from 11 a.m. to 6 p.m., and on September 17, 1999, from 8:30 a.m. to 3:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 8, 1999. Oral presentations from the public will be scheduled on September 16, 1999, between approximately 12 noon and 12:30 p.m. for the discussion of the draft guidance entitled ''Guidance Document for Dura Substitute Devices'' and between approximately 3:45 p.m. and 4:15 p.m. and 5 p.m. and 5:30 p.m. for the classification of processed human dura mater. On September 17, 1999, oral presentations from the public will be scheduled between approximately 9:45 a.m. and 10:15 a.m. for the discussion of the draft guidance entitled ''Guidance Document for Neurological Embolization Devices'' and between approximately 12:15 p.m. and 12:45 p.m. and 2:30 p.m. and 3 p.m. for the reclassification of the totally implanted spinal cord stimulator. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 8, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On September 17, 1999, from 8 a.m. to 8:30 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information regarding pending and future FDA issues. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)). Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 25, 1999.

Linda Suydam,

Senior Associate Commissioner.

[FR Doc. 99–22713 Filed 8–27–99; 10:49 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2445]

Draft Guidance for Industry on Clinical Considerations for Accelerated and Traditional Approval of Antiretroviral Drugs Using Plasma HIV RNA Measurements; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Clinical Considerations for Accelerated and Traditional Approval of Antiretroviral Drugs Using Plasma HIV RNA Measurements.'' The draft guidance is intended to assist pharmaceutical sponsors in the development of antiretroviral drugs and to serve as a focus for continued discussion among the agency, the public, industry, and scientific communities regarding the use of plasma human immunodeficiency virus (HIV) ribonucleic acid (RNA) measurements in phase 3 clinical studies of antiretroviral drugs.

DATES: Written comments on the draft guidance may be submitted by November 30, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of the draft guidance for industry are available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm''. Submit written requests for single copies of the draft guidance entitled ''Clinical Considerations for Accelerated and Traditional Approval of Antiretroviral Drugs Using Plasma HIV RNA Measurements'' to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments concerning the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5600 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Murray, Center for Drug Evaluation and Research (HFD–530), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2495.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled ''Clinical Considerations for Accelerated and Traditional Approval of Antiretroviral Drugs Using Plasma HIV RNA Measurements.'' The draft guidance summarizes the scientific basis supporting the use of HIV RNA as a primary study endpoint in both accelerated and traditional approvals of antiretroviral drugs. This summary is based on scientific data presented at a July 14 and 15, 1997, meeting of the Antiviral Drugs Advisory Committee. At this meeting, there was expert consensus that the use of plasma HIV RNA endpoints in certain situations could reliably predict clinical benefit. The draft guidance suggests that accelerated approvals could be based on studies that show a drug's contribution toward shorter-term reductions in HIV RNA (e.g., 24 weeks) while traditional approvals could be based on trials that show a drug's contribution toward durability of HIV RNA suppression (e.g., at least 48 weeks) in lieu of a traditional clinical endpoint study. Changes in CD4 cell counts should be consistent with observed HIV RNA changes when considering approval of an antiretroviral drug.

The draft guidance describes the agency's current thinking on clinical trial designs using HIV RNA changes as an endpoint for accelerated and traditional approvals. Considerations regarding control arms, study procedures, endpoints, and statistical methods for analyzing HIV RNA endpoints are discussed. The draft guidance also includes recommendations for sponsors who plan to use a new or unapproved HIV RNA assay in a clinical study. When using such assays, sponsors are encouraged to provide supporting data on the assay's limits and performance characteristics as outlined in the last section of the draft guidance.

This Level 1 draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on certain aspects of antiretroviral drug product

development for accelerated and traditional approval. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, at any time, submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 20, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–22720 Filed 8–31–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0359]

Program Priorities in the Center for Food Safety and Applied Nutrition; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting comments concerning the establishment of program priorities in the Center for Food Safety and Applied Nutrition (CFSAN) for the year 2000. As part of its annual planning, budgeting, and resource allocation process, CFSAN is conducting a comprehensive review of its programs to set priorities and establish work product expectations. This notice is being published to give the public an opportunity to provide input into the priority-setting process.

DATES: Written comments by September 30, 1999.

ADDRESSES: Submit written comments concerning this document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Donald J. Carrington, Center for Food Safety and Applied Nutrition (HFS–666), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–260–5290, email DCarring@bangate.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On January 25, 1999, CFSAN released a document entitled ''1999 CFSAN Program Priorities.'' The document, a copy of which is available on CFSAN's web page (www.cfsan.fda.gov), constitutes the Center's priority workplan for calendar year 1999. The workplan is based on input we received at a stakeholders meeting on June 24 and 25, 1998 (see 63 FR 30242, June 3, 1998), as well as input generated internally. Throughout the priority-setting process, we focused on one central question: ''Where do we do the most good for consumers?''

Approximately half of the 1999 workplan consists of activities implementing the President's Food Safety Initiative (FSI). This is consistent with the fact that currently, approximately half the Center's resources are devoted to FSI work (i.e., all activities related to pathogen reduction in food.) Outside of FSI, the workplan identifies five program areas and four cross-cutting areas that need emphasis. The five program areas are: (1) Premarket review of food ingredients; (2) nutrition, health claims, and labeling; (3) dietary supplements; (4) chemical and other contaminants; and (5) cosmetics.

The four cross cutting areas are: (1) Enhancing the science base; (2) Federal/State/local collaborations; (3) international; and (4) human resources.

Within most major program areas in the workplan, there are two lists of activities. The first list of priorities in each section, identified as the ''A'' list, are activities that CFSAN is committing to complete by the end of 1999. Activities on the ''B'' list are those the Center plans to make progress on during the year, but may not complete. CFSAN has responsibility for many important ongoing activities that are not identified in the workplan. The workplan addresses primarily those initiatives representing something new or different that needs to be addressed in that year. In addition, the workplan does not address the myriad of unanticipated issues which often require a substantial investment of CFSAN resources e.g., recent concerns about potential dioxin-contamination in certain European imports.

II. 2000 CFSAN Program Priorities

FDA is requesting comments concerning the establishment of program priorities in CFSAN for the year 2000. The input will be used to develop CFSAN's 2000 workplan. The workplan will set forth the Center's program priorities for a 9-month period, from January 1, 2000, through September 30, 2000, the end of the fiscal year. Henceforth, to be compatible with the Federal budgetary cycle, the priority-setting process and development of annual workplans will be done on a fiscal year basis. FDA intends to make this new workplan public in January 2000.

The 2000 workplan will be organized in the same format as the 1999 workplan. Accordingly, comments are requested on specific program activities for CFSAN to complete by September 30, 2000, in each of the categories described in the document entitled ''1999 CFSAN Program Priorities'' (i.e., ''A'' list activities.) Comments are also requested on those additional activities that should be worked on during the 9-month period, but not necessarily completed by the end of the fiscal year (i.e., the ''B'' list activities.)

To help focus comments, FDA requests that input regarding CFSAN program priorities address the following questions:

1. With respect to products under the jurisdiction of CFSAN, do you believe there are issues that directly affect consumer safety that are not being adequately addressed?

2. Within the 10 program areas identified previously, what specific activities do you believe should be top priorities for CFSAN and why?

3. FDA needs to ensure that its research programs provide the scientific information upon which regulatory decisions are made. In CFSAN, what do you believe should be the highest priority areas for conducting research?

4. Because so much of our nation's food supply is either imported or exported, what do you believe should be the highest priority international activities? Please identify specific activities in your answer.

Interested persons may, on or before September 30, 1999, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 25, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–22678 Filed 8–31–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2873]

Medical Devices; Draft Guidance on Evidence Models for the Least Burdensome Means to Market; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Evidence Models for the Least Burdensome Means to Market.'' This draft guidance is intended to provide guidance to the medical device industry and FDA reviewers on implementing section 205 of the Food and Drug Administration Modernization Act of 1997 (FDAMA). Section 205 requires FDA, in consultation with the product sponsor, to consider the ''least burdensome'' means that will allow appropriate premarket development and review of a product without unnecessary delays and expense to manufacturers. This draft guidance represents the agency's current thinking on implementing section 205 of FDAMA, and it is neither final nor is it in effect at this time.

DATES: Written comments concerning this draft guidance must be submitted by November 30, 1999.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance. Submit written requests for single copies on a 3.5″ diskette of the draft guidance entitled ''Evidence Models for the Least Burdensome Means to Market'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Susan Alpert, Center for Devices and Radiological Health (HFZ–400), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2022.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance entitled ''Evidence Models for the Least Burdensome Means to Market.'' Section 205 of FDAMA requires FDA, in consultation with the product sponsor, to consider the ''least burdensome'' means that will allow appropriate premarket development and review of a product without unnecessary delays and expense to manufacturers. This draft guidance is designed to help both the Center for Devices and Radiological Health (CDRH) reviewers and the medical device industry apply the new provisions of FDAMA. Through this draft guidance, CDRH intends to establish a general approach for applying the least burdensome provisions that will be applicable to any device application; this draft guidance does not attempt to establish specific clinical data requirements for any particular type of submission.

The focus of this draft guidance is the application of the least burdensome provisions to clinical data requirements because the input from stakeholders has indicated that the regulated industry is most concerned with FDA's interpretation of these provisions with respect to clinical data.

In addition, as this draft guidance was being developed, it became clear that it cannot easily be applied to in vitro diagnostic devices (IVD's) because of the unique clinical data needs associated with establishing IVD performance. The agency is soliciting comments on applying the least burdensome provisions to data requirements for IVD's.

To foster a collaborative approach to the implementation of section 205 of FDAMA, FDA's CDRH hosted a meeting with stakeholders on January 4, 1999, to solicit comments and suggestions regarding the least burdensome approach to medical device development and evaluation. CDRH heard formal presentations at that meeting and also received written comments.

This draft guidance has incorporated, in part, the written proposal dated March 11, 1999, from the ''Least Burdensome Industry Task Force'' convened by the Health Industry Manufacturers Association, comments from the January 4, 1999, stakeholders meeting, and other stakeholder communications.

This draft guidance represents the agency's current thinking on implementing the ''least burdensome'' provisions of section 205 of FDAMA. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This draft guidance is issued as a level 1 guidance consistent with GGP's.

II. Electronic Access

In order to receive the draft guidance document entitled ''Evidence Models for the Least Burdensome Means to Market'' via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch tone telephone. At the first voice prompt press 1 to access DMSA Facts, at the second voice prompt press 2, and then enter the document number 1154 followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH home page includes the draft guidance document entitled ''Evidence Models for the Least Burdensome Means to Market,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at ''http://www.fda.gov/cdrh''.

III. Comments

Interested persons may, on or before November 30, 1999, submit to the Dockets Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments

are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 25, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–22677 Filed 8–31–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2213]

Draft ''Guidance for Industry: Revised Recommendations for the Invalidation of Test Results When Using Licensed and 510(k) Cleared Bloodborne Pathogen Assays to Test Donors;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled ''Guidance for Industry: Revised Recommendations for the Invalidation of Test Results When Using Licensed and 510(k) Cleared Bloodborne Pathogen Assays to Test Donors.'' This draft guidance document, when finalized, is intended to provide guidance to blood establishments on invalidating donor test results based on control reagents required by the Clinical Laboratory Improvement Act of 1988 (CLIA). The implementation of additional quality control procedures that involve the use of external control reagents should enhance overall testing accuracy and blood safety.

DATES: Written comments on the draft guidance document may be submitted at any time, however, comments should be submitted by November 30, 1999, to ensure their adequate consideration in preparation of the final document.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Guidance for Industry: Revised Recommendations for the Invalidation of Test Results When Using Licensed and 510(k) Cleared Bloodborne Pathogen Assays to Test Donors'' to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Astrid L. Szeto, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance document entitled ''Guidance for Industry: Revised Recommendations for the Invalidation of Test Results When Using Licensed and 510(k) Cleared Bloodborne Pathogen Assays to Test Donors.'' This draft guidance document would provide recommendations for blood establishments in integrating current CLIA requirements for invalidating donor test results based on CLIA required control reagents. When finalized, this draft guidance document would replace the January 3, 1994, guidance document entitled ''Recommendations for the Invalidation of Test Results When Using Licensed Viral Marker Assays to Screen Donors.'' FDA has developed revised recommendations based on discussions held during the public meetings of the Blood Products Advisory Committee (BPAC) on September 26, 1996, and December 13, 1996, and additional discussions among the Centers for Disease Control and Prevention (CDC), Health Care Financing Administration (HCFA), and FDA. At this time, the draft guidance document is being made available for comment purposes only and is not intended for use by the industry. The agency has adopted good guidance practices (GGP's) that set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This document is being issued as a draft level 1 guidance document consistent with GGP's.

This draft guidance document represents the agency's current thinking with regard to the invalidation of test results based on the CLIA required external control reagents. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document. Written comments may be submitted at any time, however, comments should be submitted by November 30, 1999, to ensure adequate consideration in preparation of the final guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the draft guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance document by using the World Wide Web (WWW). For WWW access, connect to CBER at ''http://www.fda.gov/cber/guidelines.htm''.

Dated: August 9, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–22801 Filed 8–31–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the

Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Guidance and Forms for the Title V Application/Annual Report, OMB No. 0915–0172: Extension

The Health Resources and Services Administration (HRSA) proposes to revise the Guidance and Forms for the Application and Annual Report for the Maternal and Child Health Services Title V Block Grant Program. The guidance is used annually by the 50 States and 9 jurisdictions in making application for Block Grants under Title V of the Social Security Act, and in preparing the required annual report. The proposed revisions follow and build on extensive modifications made to the guidance and forms in 1997. The proposed revisions are of two types: (1) editorial and technical revisions based on the experiences of the States and jurisdictions in using the guidance and forms in 1998 and 1999; and, (2) the addition of a standard set of measures to be used in conducting the formal needs assessment required by Title V every five years. This needs assessment will be required of each State and jurisdiction in FY 2000.

The addition of the core set of measures for use in conducting the formal needs assessment follows discussions with State Maternal and Child Health Directors over the last two years. The changes incorporated in the 1997 revisions have been reflected in major changes in the Title V program, with much more emphasis on accountability and performance measurement as part of the performance partnership concept on which those changes were built. The inclusion now of standard measures for all States and jurisdictions to use in conducting the five-year needs assessment is a natural progression in the development of the Federal-State partnership process.

Following approval of the 1997 revisions, HRSA developed and instituted an automated electronic data collection and reporting system, the Title V Electronic Reporting Package (Title V ERP). The ERP has greatly reduced the burden on the States and jurisdictions, because it provides for automatic calculations of ratios, rates, and percentages, carries data over from year-to year, and assures that data used in multiple tables are entered only once. The ERP also provides for text entry, and facilitates the orderly printing of tables, text, and required appendices. As a result, even with the additional data that were incorporated, the expectation is that there will be a 33% reduction in the annual burden from previous levels. The estimated response burden is as follows:

Type of form	Number of respondents	Responses per respondent	Burden hours per response	Total burden hours
Application and Annual Report, with needs assessment*:				
States	50	1	450	22500
Jurisdictions	9	1	240	2160
Application and Annual Report, without needs assessment*:				
States	50	1	330	16500
Jurisdictions	9	1	133	1197

*The Application and Annual Report, with needs assessment, will be submitted in FY 2000. The Application and Annual Report, without needs assessment, will be submitted in FY 2001 and FY 2002. The average burden for the next three years is 20,018 hours.

The HRSA revision plan calls for draft versions of the new guidance to be sent to all Maternal and Child Health Directors in September, 1999. Copies will also be available to all other interested parties who request one from: Peter C. Van Dyck, M.D., M.P.H., Associate Administrator for Maternal and Child Health, Maternal and Child Health Bureau, Room 18–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. His phone number is (301) 443–2170.

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: August 26, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–22802 Filed 8–31–99; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance officer on (301) 443–1891.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance on the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: HRSA Competing Training Grant Application, Instructions and Related Regulations (OMB No. 0915–0060)—Revision

The Health Resources and Services Administration uses the information in the application to determine the eligibility of applicants for awards, to calculate the amount of each award, and to judge the relative merit of applications. The form is distributed electronically via the Internet. The budget is negotiated for all years of the project period based on this application and program-specific instructions that include greater standardization of content for the project summary and the detailed description of the project.

The Bureau of Health Professions is planning to remove from the Code of Federal Regulations the existing training grant regulations under 42 CFR parts 57 and 58. It is the intent of the Department to operate under the new statute for compliance, implementation, and administration of the training grant programs under titles VII and VIII of the PHS Act. The existing regulations are fundamentally and extensively inconsistent with the new law which takes an interdisciplinary approach (and thus inhibits the achievement of the statute's objectives). Program specific guidance and information for preparing applications are now provided in the grant application materials (which makes them now self-contained).

The estimated annual burden for the application is as follows:

Requirement	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Application	1,190	1	56.25	66,938

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: August 26, 1999.

James J. Corrigan,

Associate Administrator for Management and Program Support.

[FR Doc. 99–22803 Filed 8–31–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Final Eligibility Criteria, Preferences, and Priorities for Scholarships for Disadvantaged Students

SUMMARY: The Health Resources and Services Administration (HRSA) announces final eligibility criteria, preferences, and priorities for the Scholarships for Disadvantaged Students (SDS) program, under the authority of section 737 of the Public Health Service Act (the Act), Title VII, Part B, as amended by the Health Professions Education Partnerships Act of 1998,

Pub. L. 105–392, dated November 13, 1998. A notice which proposed eligibility criteria, preferences, and priorities for the SDS program was published in the **Federal Register** at 64 FR 29660, dated June 2, 1999. A period of 30 days was established to allow public comment concerning the proposed eligibility criteria, preferences, and priorities. Five comments were received. This notice discusses these comments and sets forth the final eligibility criteria, preferences, and priorities.

EFFECTIVE DATE: The program elements described in this notice are for use in fiscal year (FY) 1999 and beyond and will become effective, except where indicated otherwise, for SDS funds awarded to schools in FY 1999 and beyond.

Purpose

The SDS program provides funds to health professions and nursing schools for the purpose of assisting such schools in providing scholarships to individuals from disadvantaged backgrounds who are enrolled (or accepted for enrollment) as full-time students in the schools.

For purposes of the SDS program in FY 1999, an ''individual from a disadvantaged background'' is defined in 42 CFR 57.1804, subpart S, as one who:

(1) Comes from an environment that has inhibited the individual from obtaining the knowledge, skills, and abilities required to enroll in and graduate from a health profession or nursing school, or from a program providing education or training in allied health professions; or

(2) Comes from a family with an annual income below a level based on low-income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in all health professions and nursing programs. The Secretary will periodically publish these low income levels in the **Federal Register**.

The following income figures determine what constitutes a low-income family for purposes of the SDS program for FY 1999.

Size of parents' family [1]	Income level [2]
1	$10,900
2	14,100
3	16,800
4	21,500
5	25,400
6 or more	28,500

[1] Includes only dependents listed on Federal income tax forms.

[2] Adjusted gross income for calendar year 1998, rounded to nearest $100.

Under the FY 1999 appropriations bill, $38.1 million has been appropriated for this program. Of the funds available for FY 1999, 16 percent shall be made available to schools agreeing to expend the funds only for nursing scholarships. The balance will support scholarships for eligible health professions students. The period of fund availability will be one academic year.

Use of Funds

Funds awarded to a school under this program may be used as follows:

(1) To award scholarships to former recipients of scholarships under the Exceptional Financial Need (EFN) Scholarship program and the Financial Assistance for Disadvantaged Health Professions Students (FADHPS) program (sections 736 and 740(d)(2)(B) of the Public Health Service Act, as such sections existed prior to the enactment of Pub. L. 105–392), at levels comparable to what these students would have received prior to phase out of the EFN and FADHPS programs, and with service agreements that are

consistent with those the students entered into to receive EFN and FADHPS funds in FY 1998.

(2) To award scholarships to eligible students enrolled in the school, to be expended only for tuition expenses, other reasonable educational expenses, and reasonable living expenses (as defined by the school for all students attending the school) incurred while enrolled in a school as a full-time student. The amount of the scholarship may not, for any year of attendance, exceed the total amount required for the year for the expenses specified above, and may not exceed the student's financial need, as determined in accordance with a need analysis procedure approved by the Department of Education.

Any school receiving SDS funds must maintain separate accountability for these funds.

Statutory School Eligibility Requirements

An entity that is eligible to receive funds under this program is:

(1) As defined in section 799B of the Act, a school of medicine, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, public health, chiropractic, or allied health, a school offering a graduate program in behavioral and mental health practice, or an entity providing programs for the training of physician assistants; or, as defined in section 801 of the Act, is a school of nursing. Each school or program must be accredited by a recognized body or bodies approved for such purpose by the Secretary of Education, and by a specialized accrediting body approved for the health discipline applying for program participation; and

(2) Carrying out a program for recruiting and retaining students from disadvantaged backgrounds, including students who are members of underrepresented racial and ethnic minorities.

Final Administrative School and Program Eligibility Criteria

A school or program must comply with the following outcome-based measures to be eligible to receive SDS funds in FY 1999:

(1) Individuals from disadvantaged backgrounds must comprise at least 5 percent of the total enrollment in the school or program for which funds are requested, based on enrollment data for academic year 1997–98; and

(2) Individuals from disadvantaged backgrounds must comprise at least 5 percent of the total graduates from the school or program for which funds are requested, based on graduates for academic year 1997–98.

A school or program must comply with the following outcome-based measures to be eligible to receive SDS funds in FY 2000:

(1) Individuals from disadvantaged backgrounds must comprise at least 10 percent of the total enrollment in the school or program for which funds are requested, based on enrollment data for academic year 1998–99; and

(2) Individuals from disadvantaged backgrounds must comprise at least 10 percent of the total graduates from the school or program for which funds are requested, based on graduates for academic year 1998–99.

The threshold levels for determining a school or program's eligibility will continue to increase gradually beyond FY 2000 until students from disadvantaged backgrounds are represented in the health care workforce at levels that best address the HRSA goals of assuring access to health care for all Americans and eliminating health disparities among racial and ethnic minorities. Threshold levels for determining school or program eligibility for SDS funding beyond FY 2000 will be announced annually in the HRSA Preview and/or in SDS application materials.

Comments on Proposed Administrative School and Program Eligibility Criteria

Four comments were received concerning the proposed administrative school and program eligibility criteria. One comment objected to establishing a percentage quota for schools' acceptance of students from disadvantaged backgrounds, indicating that this could adversely affect the schools' decisions of acceptance. Although the commenter agreed that it is necessary to assist those from disadvantaged backgrounds, he felt that to create a ''must'' situation was not entirely fair.

In response, the Department points out that these criteria carry out Congressional intent as expressed in the Senate Report accompanying Pub. L. 105–392. This report states that the committee expects the Secretary to apply appropriate standards in determining which schools or programs from all eligible disciplines have complied with the requirement to be carrying out a program for recruiting and retaining students from disadvantaged backgrounds, using outcome-based measures that provide an indication of the success of the program. The report further states that the existence of a recruitment and retention program for students from disadvantaged backgrounds should not, in itself, result in the eligibility of a school or program if the school or program is unable to demonstrate that the recruitment and retention program has achieved success, based on the number and/or percentage of disadvantaged students who graduate from the school (p. 20, Senate Report 105–220).

Accordingly, the Secretary has retained the first two outcome-based eligibility criteria as proposed. However, the Secretary notes that the measures to determine eligibility for FY 1999 are low in consideration of the criteria as a new requirement. It is the Secretary's view that any school or program that cannot meet the FY 1999 thresholds and retention ratio has not evidenced a strong commitment to the recruitment and retention of individuals from disadvantaged backgrounds.

Recognizing that the FY 1999 initial levels are low, and that many schools and programs have indicated since the SDS program began that they have activities in place to support the education of individuals from disadvantaged backgrounds, the outcome-based measures with which a school or program must comply to be eligible to receive SDS funds will be increased for FY 2000 and beyond.

One commenter saw a potential problem with the third outcome-based measure which a school or program would have been required to meet to receive SDS funds. The proposed criterion had established ratios that compared graduates from disadvantaged backgrounds with the total number of students enrolled who are from disadvantaged backgrounds, based on the number of years required to complete the course of study. For example, the criterion had stated that in a four-year program, the ratio of disadvantaged students who graduate must be at least 20 percent of the total enrollment of disadvantaged students. The commenter found this reasonable if there is a steady number of disadvantaged students enrolling at the school, but inappropriate for a school that is increasing its disadvantaged enrollment. The Secretary agrees that this proposal, as drafted, could have adversely affected a school or program that is increasing its disadvantaged enrollment. In response, the Secretary has postponed use of this threshold until FY 2001, pending further analysis of how to most accurately measure this aspect of retention. For FY 2001, information on this measure will be provided in the HRSA preview and/or in SDS application materials.

Statutory Student Eligibility Requirements

To qualify for the SDS program, a student is required to:

(1) Be a resident of the U.S. and either be a U.S. citizen, a U.S. national, an alien lawfully admitted for permanent residence in the U.S., a citizen of the Commonwealth of the Northern Mariana Islands, a citizen of the Commonwealth of Puerto Rico, or a citizen of the Republic of Palau, or a citizen of the Marshall Islands, or a citizen of the Federated States of Micronesia;

(2) Meet the definition of an ''individual from a disadvantaged background'' as defined above;

(3) Have a financial need for a scholarship, in accordance with a need analysis procedure approved by the Department of Education (Pub. L. 105–244, Part F, The Higher Education Act of 1965 as amended). In addition, any student who is enrolled (or accepted for enrollment) in a health profession school or program must provide information on his or her parents' financial situation, regardless of the tax status of the student; and

(4) Be enrolled (or accepted for enrollment) at an eligible school for enrollment as a full-time student in a program leading to a degree in a health profession or nursing.

Statutory Student Preferences

The law requires that in providing SDS scholarships, the school or program give preference to students for whom the cost of attending an SDS school or program would constitute a severe financial hardship. Severe financial hardship is to be determined by the school or program in accordance with standard need analysis procedures prescribed by the Department of Education for its Federal student aid programs. The school or program has discretion in deciding how to determine which students have ''severe financial hardship,'' as long as the standard is applied consistently to all eligible students.

The law also requires that schools give preference to former recipients of scholarships under sections 736 (EFN Scholarships) and 740(d)(2)(B) (FADHPS Scholarships), as such sections existed on November 12, 1998. The Secretary is implementing this preference by making a separate allocation of funds for these students, based on information provided by schools (allopathic medical, osteopathic medical, and dental schools with former EFN and FADHPS recipients only), prior to allocating the remaining SDS money for all other eligible students.

Final Administrative Student Preference

Beginning in academic year 2000–01, schools or programs must give preference, in the awarding of SDS funds, to students who have participated in an academic enrichment program funded in whole or in part by the Health Careers Opportunity Program (HCOP), authorized by section 739 of the Act, or by the Nursing Workforce Diversity (NWD) Program (formerly Nursing Educational Opportunities Program (NEOP)), authorized by section 821 of the Act. This will help assure that students who have participated in HCOP and NWD programs are not deterred from enrolling in a health professions or nursing school or program due to a lack of financial aid. Under this preference, it is the school's or program's responsibility to identify HCOP or NWD students to assure that they receive preference in the awarding of SDS funds. For example, the school or program could ask, as part of the financial aid application, whether the student participated in an academic enrichment program funded by HCOP or NWD, or could work with the admissions office to determine which students have been involved in HCOP or NWD programs. The Secretary intends that schools and programs implement this preference without a significant additional burden. Under this preference, the school or program continues to have discretion in determining the amount of funds to award to HCOP or NWD students, but must identify and fund HCOP or NWD students (provided they have financial need) before funding other eligible students who do not meet a student preference.

Schools and programs that currently have access to information on which students have participated in HCOP or NWD programs are encouraged to implement this preference beginning in academic year 1999–2000. However, since some schools and programs may not currently have access to this information, the Secretary is not requiring schools and programs to implement the preference for HCOP or NWD students until academic year 2000–01.

Comments on Proposed Administrative Student Preference

Three comments were received on the proposal that, beginning in academic year 2000–01, schools or programs give preference in the awarding of SDS funds to students who have participated in an academic enrichment program funded in whole or in part by the Health Careers Opportunity Program (HCOP), authorized by section 739 of the Act. One commenter objected that, although on the surface this proposal has merit, many schools are unable to secure this type of highly competitive grant. The Secretary clarifies that this preference does not reduce the amount of SDS funding available to schools or programs that have not received HCOP grant funding, but merely assures that when a school or program awards the SDS money that it receives, it must consider students who participated in HCOP supported programs before considering students who do not qualify for a funding preference. Therefore, no change has been made.

One commenter suggested that this provision be clarified to include, in addition to HCOP participants, students who have participated in academic enrichment programs funded in whole or in part by Nursing Workforce Diversity (NWD) grants (formerly known as Nursing Educational Opportunity Program (NEOP) grants), authorized by section 821 of the Act. The NWD grants are similar to the HCOP grants, but are directed toward nursing students. The Secretary concurs with this suggestion and has clarified the provision accordingly.

Definitions

''Black or African American'' means a person having origins in any of the black racial groups of Africa.

''Hispanic or Latino'' means a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race.

''American Indian or Alaska Native'' means a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.

Definitions listed above are contained in Directive No. 15 of Office of Management and Budget Circular No. A–46, as revised.

''Native American'' as defined in Pub. L. 101–527, means American Indian, Alaska Native, Aleut, or Native Hawaiian.

''Graduate program in behavioral health and mental health practice'' means a graduate program in clinical psychology, clinical social work, professional counseling, or marriage and family therapy as defined in sec. 799B(1)(D) of the Act.

''Graduate program in clinical social work'' means an accredited graduate program in a public or nonprofit private institution in a State that provides training in a concentration in health or mental health care leading to a graduate

degree in social work as defined in sec. 799B(1)(C) of the Act.

''Graduate program in marriage and family therapy'' means an accredited graduate program in a public or nonprofit private institution in a State that provides training in a concentration leading to a graduate degree in marriage and family therapy as defined in sec. 799B(1)(C) of the Act.

''Graduate program in professional counseling'' means an accredited graduate program in a public or nonprofit private institution in a State that provides training in a concentration leading to a graduate degree in gerontological counseling, mental health counseling, or rehabilitation counseling.

''Medically underserved community'' means any geographic area and/or population served by any of the following practice sites—

(1) Community Health Centers (section 330 of the Act);

(2) Migrant Health Centers (section 329 of the Act);

(3) Health Care for the Homeless Grantees (section 340 of the Act);

(4) Public Housing Primary Care Grantees (section 340A of the Act);

(5) Rural Health Clinics, federally designated (section 1861(aa)(2) of the Social Security Act);

(6) National Health Service Corps sites, freestanding (section 333 of the Act);

(7) Indian Health Service sites (Pub. L. 93–638 for tribally operated sites and Pub. L. 94–437 for Indian Health Service operated sites);

(8) Federally Qualified Health Centers (section 1905(a) and (1) of the Social Security Act);

(9) Primary Medical Care, Mental Health, and Dental Health Professional Shortage Areas (HPSAs) (designated under section 332 of the Act);

(10) State or Local Health Departments as defined and published in the **Federal Register** Notice of April 4, 1994 (59 FR 15741–44); or

(11) Ambulatory practice sites designated by State Governors as serving medically underserved communities as defined and published in the **Federal Register** Notice of April 4, 1994 (59 FR 15741–44).

Final Institutional Preferences

For fiscal year 1999 and beyond, among allied health schools or programs, the Secretary will give preference to the following baccalaureate or graduate degree allied health professions schools or programs: Dental hygiene, medical laboratory technology, occupational therapy, physical therapy, radiologic technology, speech pathology, audiology, and registered dieticians.

Institutional Funding Priorities

In accordance with section 737(c) of the Act, the Secretary shall give priority to eligible entities based on the proportion of graduating students going into primary care, the proportion of underrepresented minority students, and the proportion of graduates working in medically underserved communities. Any eligible school or program that qualifies for one or more funding priorities will receive extra weighting in the allocation formula.

Final Primary Care Funding Priority

For purposes of determining which schools and programs receive priority based on the proportion of graduating students going into primary care, the Secretary is defining primary care to include:

(1) Allopathic and osteopathic medical students that enter family medicine, general internal medicine, general pediatrics, and preventive medicine, and general osteopathic medicine. This is consistent with the statutory definition of primary care for the Primary Care Loan (PCL) program, authorized under section 723 of the Act;

(2) General dentistry (including Dental Public Health and Pediatric Dentistry), which has been included as primary care for purposes of the Exceptional Financial Need (EFN) Scholarship program and the Financial Assistance for Disadvantaged Health Professions Students (FADHPS) program;

(3) Nurse practitioners and nurse midwives who are practicing primary care; and

(4) Physician assistants who are practicing primary care.

For purposes of the SDS program, the Secretary is defining ''primary care'' to include the above disciplines because, with the exception of general dentistry, they are involved in the provision of comprehensive and continuous care and provide an entry to the health care system. The Secretary has included general dentistry, including Dental Public Health and Pediatric Dentistry, because dentistry acts as the entry to the health care system for a particular type of care which is not covered by the other disciplines.

For the above disciplines, a school or program may qualify for the primary care priority if at least 50 percent of its graduates from the specified year are practicing primary care. For allopathic and osteopathic medical schools, the determination of which schools are eligible for the funding priority is based on the same data used to determine compliance with the PCL school requirements. Thus, for the FY 1999 award process, priority is based on the activities, during academic year 1997–98, of Post Graduate Year (PGY)–3 graduates (i.e., those who graduated during academic year 1994–95), but for FY 2000, priority will be based on the activities, during academic year 1998–99, of PGY–4 graduates (i.e., those who graduated during academic year 1994–95). Beyond FY 2000, priority will be based on the activities of PGY–4 graduates. This will allow allopathic and osteopathic medical schools to submit, for the SDS program, the same data submitted for the PCL program if they are PCL participants.

For the remaining primary care disciplines, the following measure will be used: (1) The determination of compliance for FY 1999 will be based on the activities, during academic year 1997–98, of students who graduated during academic year 1996–97; (2) the determination of compliance for FY 2000 will be based on the activities, during academic year 1998–99, of students who graduated during academic year 1997–98; and (3) the determination of compliance beyond FY 2000 will be based on the activities, during the most recently completed academic year, of students who graduated during the previous academic year.

Comments on Proposed Primary Care Funding Priority

Two comments were received on the primary care funding priority. One commenter stated that some professional schools have multiple missions (e.g., research as well as primary care) and may not be able to meet the 50 percent primary care threshold. The commenter indicated that it would be unfair not to give disadvantaged students at these schools the advantage of SDS funding, and that they would be penalized because of the school that they chose to attend.

In response, the Department notes that the statute requires that priority be given to schools based on the percentage of primary care graduates, reflecting the Congress' continued concern regarding the shortage of primary care providers. The Department also clarifies that eligible schools which do not meet this funding preference can still receive SDS funds, but will not receive the additional weighting associated with this funding preference.

Final Underrepresented Minority Funding Priority

For purposes of granting priority based on the proportion of underrepresented minority students in

FY 1999, the Secretary will give priority to any school or program that has an underrepresented minority enrollment that is above the national average for the discipline.

The percentage of underrepresented minority enrollment required to qualify for this funding priority will increase gradually beyond FY 1999 until it is equal to the underrepresented minority enrollment needed to reach parity in the health care workforce. The percentage required after FY 1999 will be announced annually in the HRSA Preview and/or SDS application materials.

Final Medically Underserved Community Funding Priority

For purposes of granting priority based on the proportion of graduates working in medically underserved communities in FY 1999, the Secretary will give priority to any school or program for which at least 10 percent of the graduates from the specified year are practicing in medically underserved communities.

The percentage of a school or program's graduates who must be practicing in medically underserved communities to qualify for this funding priority will increase gradually beyond FY 1999 until it is representative of a level that has a meaningful impact on the elimination of medically underserved communities. The percentage required after FY 1999 will be announced annually in the HRSA Preview and/or the SDS application materials.

For allopathic and osteopathic medical schools, the determination of which schools are eligible for the funding priority will be based on the same population of graduates used to determine compliance with the primary care funding priority. Thus, for the FY 1999 awards, priority will be based on the activities, during academic year 1997–98, of allopathic and osteopathic medical students who graduated 3 years earlier (academic year 1994–95), but for FY 2000, priority will be based on the activities, during academic year 1998–99, of allopathic and osteopathic medical students who graduated 4 years earlier (academic year 1994–95). Beyond FY 2000, priority will be based on the activities of PGY–4 graduates.

For other schools and programs, the following measure will be used: (1) The determination of compliance for FY 1999 will be based on the activities, during academic year 1997–98, of students who graduated during academic year 1996–97; (2) the determination of compliance for FY 2000 will be based on the activities, during academic year 1998–99, of students who graduated during academic year 1997–98; and (3) the determination of compliance beyond FY 2000 will be based on the activities, during the most recently completed academic year, of students who graduated during the previous academic year.

Schools and programs that do not have data on the percentage of their graduates who are practicing in medically underserved communities may still apply for SDS funds, but will not receive the additional weighting associated with this funding priority.

Final Procedures for Calculating Awards

Awards to eligible schools and programs will be calculated by comparing the weighted number of eligible students in each eligible school and program with the total weighted number of eligible students in all eligible schools and programs.

For FY 1999, the number of ''eligible students'' for each school or program will be the lesser of: (1) The number of disadvantaged graduates for academic year 1997–98 multiplied times the number of years required to complete the program (based on a 9-month academic year); or (2) the total disadvantaged enrollment during academic year 1997–98. For example, if a 4-year program had 100 disadvantaged graduates and a disadvantaged enrollment of 500, its award will be based on 400 eligible students (100 graduates times 4). If another 4-year program had 100 disadvantaged graduates and a disadvantaged enrollment of 300, its award will be based on 300 eligible students (the total disadvantaged enrollment). After determining the number of eligible students at each school or program, this number will be adjusted to reflect the extra weighting associated with any funding priorities.

For FY 2000, the number of ''eligible students'' for each school or program will be determined using the procedures described above for FY 1999, with the calculation based on disadvantaged data from academic year 1998–99. Beyond FY 2000, the same procedures will be followed, with the calculation based on disadvantaged data from the most recently completed academic year.

Comments on Proposed Procedures for Calculating Awards

One comment was received on the proposed procedures for calculating awards. This commenter objected to the possibility that an eligible school might not receive funding if it did not qualify for one or more of the funding priorities. The commenter stated that all schools that meet the required outcome measures are doing a credible job of enrolling and graduating disadvantaged students and should receive funding for these students. In response, the procedures for calculating awards for FY 1999 will assure that all eligible schools receive SDS funding.

National Health Objectives for the Year 2000

The Public Health Service is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Scholarships for Disadvantaged Students program is related to the priority area of Academic and Community Partnership Programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–0325; telephone (202) 783–3238.

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The Public Health Service strongly encourages all award recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

(The Catalog of Federal Domestic Assistance Number for the Scholarships for Disadvantaged Students program is 93.925. This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100)).

This program is not subject to the Public Health Systems Reporting Requirements.

Dated: August 26, 1999.

Claude Earl Fox,

Administrator.

[FR Doc. 99–22804 Filed 8–31–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 19(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: September 1, 1999.

Open: 9:30 AM to 11:00 AM.

Agenda: To discuss matters of program relevance.

Place: Doubletree Hotel (Pentagon City, National Airport), 300 Army Navy Drive, Arlington, VA 22202.

Closed: 11:00 AM to 1:30 PM.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel (Pentagon city, National Airport), 300 Army Navy Drive, Arlington, VA 22202.

Contact Person: Jerry Roberts, PhD, Scientific Review Administrator, Office of Scientific Review, National Institutes of Health, Building 38A, Bethesda, MD 20892, 301–402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: August 25, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–22708 Filed 8–31–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: September 28, 1999.

Open: 8:30 AM to 12:00 PM.

Agenda: The meeting will be open to the public to discuss administrative details relating to Council business and special reports.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Closed: 1:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Steven J. Hausman, PhD, Deputy Director, NIAMS/NIH Bldg. 31, Room 4C–32, 31 Center Dr, MSC 2350, Bethesda, MD 20892–2350.

(Catalogue of Federal Domestic Assistant Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: August 25, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–22709 Filed 8–31–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Conference Grants (R13).

Date: September 1, 1999.

Time: 1:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T. W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: J. Patrick Mastin, PhD, Scientific Review Administrator, NIEHS, P.O. Box 12233 MD EC–24, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Conference Grants (R13).

Date: September 1, 1999.

Time: 2:30 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T. W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: J. Patrick Mastin, PhD, Scientific Review Administrator, NIEHS, P.O. Box 12233 MD EC–24, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Conference Grants (R13).

Date: September 2, 1999.

Time: 11:00 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T. W. Alexander Drive, Building 4401, Conference Room 3446,

Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: J. Patrick Mastin, PhD, Scientific Review Administrator, NIEHS, P.O. Box 12233 MD EC–24, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Conference Grants (R13).

Date: September 2, 1999.

Time: 1:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T. W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: J. Patrick Mastin, PhD, Scientific Review Administrator, NIEHS, P.O. Box 12233 MD EC–24, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Conference Grants (R13).

Date: September 2, 1999.

Time: 2:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T. W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: J. Patrick Mastin, PhD, Scientific Review Administrator, NIEHS, P.O. Box 12233 MD EC–24, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: August 25, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–22710 Filed 8–31–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for endangered species permit.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: Written data or comments on these applications must be received, at the address given below, by October 1, 1999.

ADDRESSES: Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Coordinator). Telephone: 404/679–7313; Facsimile: 404/679–7081.

FOR FURTHER INFORMATION CONTACT: David Dell, Telephone: 404/679–7313; Facsimile: 404/679–7081.

SUPPLEMENTARY INFORMATION:

Applicant: Carl J. Petrick, Eglin Air Force Base, Florida, TE016260–0.

The applicant requests authorization to take (capture for banding and harass during nest monitoring and augmentation) the endangered red-cockaded woodpecker, *Picoides borealis,* throughout the species range in Florida for the purpose of enhancement of survival of the species.

Applicant: Robert W. Thomas III, Ridgeway, South Carolina, TE016212–0

The applicant requests authorization to take (capture for banding and harass during nest monitoring and augmentation) the endangered red-cockaded woodpecker, *Picoides borealis,* throughout the species range in South Carolina and Georgia for the purpose of enhancement of survival of the species.

Applicant: Peter K. Swiderek, Fort Benning, Georgia, TE016270–0.

The applicant requests authorization to take (capture, band, translocate, and harass during nest monitoring and augmentation) the endangered red-cockaded woodpecker, *Picoides borealis,* throughout the species range in Georgia, Florida, Alabama, and Mississippi for the purpose of enhancement of survival of the species.

Applicant: Stephen C. Willard, Fort Gordon, Georgia, TE016278–0.

The applicant requests authorization to take (capture, band, translocate, and harass during nest monitoring and augmentation) the endangered red-cockaded woodpecker, *Picoides borealis,* throughout the species range in Georgia, for the purpose of enhancement of survival of the species.

Dated: August 25, 1999.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 99–22715 Filed 8–31–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Wildlife Conservation Society, Bronx, NY PRT–006966.

The applicant requests a permit to re-export one Hooded Crane (*Grus monacha*) to the Vogel Park Walsrode, Germany, for the purpose of breeding and zoological display.

Applicant: Patricia Zerbini, Williston, Florida, PRT–810755.

The applicant requests a permit to re-export and re-import captive born Asian elephants (*Elephas maximus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three-year period.

Applicant: Feld Entertainment, Inc, Vienna, VA, PRT–016633.

The applicant requests a permit to re-export and re-import captive-born Bengal tigers (*Panthera tigris tigris*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted

by the applicant over a three-year period.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The following applicants have applied for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR 18).

Applicant: Alvin M. Kern, Cold Spring, MN, PRT–016094.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: August 27, 1999.

Kristen Nelson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–22737 Filed 8–31–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment, and Receipt of Application for an Incidental Take Permit for a 40.6-Acre Mixed Commercial Development Project, in Volusia County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Home Depot, U.S.A. of Atlanta, Georgia (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize the take of three families of the threatened Florida scrub-jay, *Aphelocoma coerulescens* and the threatened Eastern indigo snake, *Drymarchon corais couperi,* in Volusia County, Florida, for a period of five (5) years. The proposed taking is incidental to land clearing activities and commercial development on a 40.6-acre project site (Project). The Project contains about 21.6 acres of occupied Florida scrub-jay habitat, and the potential exists for the entire Project to provide habitat to the Eastern indigo snake. A description of the mitigation and minimization measures is provided in the Applicant's Habitat Conservation Plan (HCP) to address the effects of the Project to the protected species and is outlined in the **SUPPLEMENTARY INFORMATION** section below.

The Service also announces the availability of an environmental assessment (EA) and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6). The Service specifically requests comment on the appropriateness of the ''No Surprises'' assurances should the Service determine that an ITP will be granted and based upon the submitted HCP. Although not explicitly stated in the HCP, the Service has, since August 1994, announced its intention to honor a ''No Surprises'' Policy for applicants seeking ITPs. Copies of the Service's ''No Surprises'' Policy may be obtained by making a written request to the Regional Office (see **ADDRESSES**). The Service is soliciting public comments and review of the applicability of the ''No Surprises'' Policy to this application and HCP.

DATES: Written comments on the permit application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before October 1, 1999.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216–0912. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Requests for the documentation and comments must be submitted in writing to be processed. Please reference permit number TE016169–0 in such comments, or in requests for the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Permit Coordinator, (see ADDRESSES above), telephone: 404/679–7110; or Mr. Jay B. Herrington, Fish and Wildlife Biologist, Jacksonville Field Office, (see ADDRESSES above), telephone: 904/232–2580, extension 120.

SUPPLEMENTARY INFORMATION: The Florida scrub-jay is geographically isolated from other species of scrub-jays found in Mexico and the Western United States. The Florida scrub-jay is found almost exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the Florida scrub-jay population has been reduced by at least half in the last 100 years. Surveys have indicated that one family of Florida scrub-jays inhabit the Project site. Construction of the Project's buildings and infrastructure will likely result in death of, or injury to, Florida scrub-jay incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with property development will reduce the availability of feeding, shelter, and nesting habitat.

The Project site also provides habitat suitable for Eastern indigo snakes, although none have been detected there. Due to the secretive nature of this species, and the possibility that snakes could enter the Project from adjacent undeveloped land, the applicant has requested ITP coverage.

The EA considers the environmental consequences of three alternatives. The no action alternative may result in loss of habitat for Florida scrub-jay and

exposure of the Applicant under Section 9 of the Act. The on-site preservation alternative would preserve 8.2 acres of occupied habitat. This option would not require an ITP, however, the portion of commercially developable property would be reduced from 11 acres to 2.8 acres. In addition, this option would not provide any management for the Florida scrub-jay family currently located on the property. The off-site mitigation alternative would provide funds to the National Fish and Wildlife Foundation Fund for the Conservation of the Florida Scrub-jay to procure suitable Florida scrub-jay habitat in Volusia County, Florida to be managed into perpetuity. This off-site mitigation would also preserve and manage habitat suitable for Eastern indigo snakes to help ensure survival of this species throughout its range. The proposed action alternative is issuance of the ITP with off-site mitigation. The affirmative conservation measures outlined in the HCP to be employed to offset the anticipated level of incidental take to the protected species are the following:

1. To mitigate for the up to 21.6 acres of scrub habitat occupied by Florida scrub-jays that would be eliminated on site, and to mitigate for the loss of 40.6 acres of potential Eastern indigo snake habitat, the applicant will provide funds to the National Fish and Wildlife Foundation in the amount of $272,160.00 to be spent for procurement of occupied Florida scrub-jay habitat and conservation in Volusia County at a later date. This amount is based on mitigation at a ratio of 2:1 (two acres purchased for every one acre impacted and land costs of $5,000 per acre), a $1,000 per acre management endowment, and an administrative fee of five percent of the total cost for management of the National Fish and Wildlife Foundation Fund for conservation of the Florida scrub-jay. Management of mitigation lands in optimum condition for Florida scrub-jays is assumed by the Service to provide habitat of similar benefit for the Eastern indigo snake. Upon procurement, the mitigation land would first be donated to and subsequently managed by a holding company. After initial habitat restoration, the property would then be conveyed to Volusia County or other acceptable land conservation program, along with a conservation easement, requiring preservation and management for Florida scrub-jays and Eastern indigo snakes into perpetuity.

2. No clearing of scrub vegetation would occur during the nesting season of the Florida scrub jay.

3. The HCP provides a funding mechanism for these mitigation measures.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP.

The Service will also evaluate whether the issuance of a Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: August 25, 1999.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 99–22716 Filed 8–31–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

Letters of Authorization To Take Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with Section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations (50 CFR 18.27), notice is hereby given that Letters of Authorization to take polar bears and Pacific walrus incidental to oil and gas industry activities have been issued to the following companies:

Company	Activity	Date issued
BP Exploration (Alaska) Inc	Exploration	July 19, 1999.
Exxon Company U.S.A	Exploration	August 5, 1999.
Fairweather Incorporated	Development	August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Rosa Meehan or Mr. John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammal Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3800.

SUPPLEMENTARY INFORMATION: All Letters of Authorization were issued in accordance with U.S. Fish and Wildlife Service Federal Rule and Regulations ''Marine Mammals; Incidental Take During Specified Activities'' [64 FR 4328].

Dated: August 17, 1999.

David B. Allen,

Regional Director.

[FR Doc. 99–22420 Filed 8–31–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment VI to the Tribal-State Compact for Regulation of Class III Gaming Between the Burns-Paiute Tribe and the State of Oregon, which was executed on June 28, 1999.

DATES: This action is effective September 1, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of

Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: August 20, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–22706 Filed 8–31–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Sixth Renewal of Agreement between the Northern Cheyenne Tribe and the State of Montana regarding Class III gaming on the Northern Cheyenne Reservation which was executed on February 22, 1999.

DATES: This action is effective September 1, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: August 19, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–22705 Filed 8–31–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(CO–930–1430–01; COC–096885, COC–28267)

Public Land Order No. 7409; Revocation of Bureau of Reclamation Withdrawals; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial order and a public land order which withdrew National Forest System lands for the Bureau of Reclamation's West Divide Project and the Bureau of Reclamation's Colorado-Big Thompson Project. These lands are no longer needed for reclamation purposes. This action will open 1,299.64 acres to such forms of disposition as may by law be made of National Forest System lands and to mining. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated December 8, 1942, which withdrew National Forest System lands for the Bureau of Reclamation Haystack Reservoir Site of the West Divide Project and Public Land Order No. 3359, as amended by Public Land Order No. 3478, which withdrew National Forest System lands for the Bureau of Reclamation Green Mountain Afterbay and Dam of the Colorado-Big Thompson Project, are hereby revoked in their entireties:

Sixth Principal Meridian

White River National Forest

T. 2 S., R. 80 W.,
- Sec. 3, lot 4, SW¼NW¼, and W½SW¼;
- Sec. 9, NE¼SE¼;
- Sec. 10, SW¼NE¼, NW¼NW¼, S½NW¼, N½SW¼, SE¼SW¼, and W½SE¼.

T.9 S., R. 91 W.,
- Sec. 13, lot 2, SE¼SW¼, and S½SE¼.
- Sec. 14, lot 10;
- Sec. 23, lots 1, 4, and 8:
- Sec. 24, lots 1 to 9, inclusive, NE¼NE¼ and S½SE¼;
- Sec. 25, N½N½.

The areas described aggregate 1,299.64 acres in Mesa and Summit Counties.

2. At 9:00 a.m. on October 1, 1999, the lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: August 12, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–22687 Filed 8–31–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–1230–00; 8371]

Arizona: Long-Term Visitor Area Program for 1999–2000 and Subsequent Use Seasons; Revision to Existing Supplementary Rules, Yuma Field Office, Arizona, and California Desert District, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Publication of supplementary rules for Long-Term Visitor Areas within the California Desert District, El Centro Resource Area.

SUMMARY: The Bureau of Land Management (BLM) Yuma Field Office and California Desert District announce revisions to the Long-Term Visitor Area (LTVA) Program. The program, which was instituted in 1983, established designated LTVAs and identified an annual long-term use season from September 15 to April 15. During the long-term season, visitors who wish to camp on public lands in one location for extended periods must stay in the designated LTVAs and purchase an LTVA permit.

EFFECTIVE DATE: September 15, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Lowans, Outdoor Recreation Planner, Yuma Field Office, 2555 East Gila Ridge Road, Yuma, AZ 85365, telephone (520) 317–3210; or Anna Atkinson, Outdoor Recreation Planner, Palm Springs-South Coast Resource Area, 690 West Garnet Avenue, North Palm Springs, CA 92258, telephone (760) 251–4800; or Kelley Bubolz, Outdoor Recreation Planner, El Centro Resource Area, 1661 South Fourth Street, El Centro, CA 92243, telephone (760) 337–4400.

SUPPLEMENTARY INFORMATION: The purpose of the LTVA program is to provide areas for long-term winter camping use. The sites designated as

LTVAs are, in most cases, the traditional use area of long-term visitors. Designated sites were selected using criteria developed during the land management planning process, and environmental assessments were completed for each site location.

The program was established to safely and properly accommodate the increasing demand for long-term winter visitation and to provide natural resources protection through improved management of this use. The designation of LTVAs assures that specific locations are available for long-term use year after year, and that inappropriate areas are not used for extended periods.

Visitors may camp without an LTVA permit outside of LTVAs, on public lands not otherwise posted or closed to camping, for up to 14 days in any 28-day period.

Authority for the designation of LTVAs is contained in title 43, Code of Federal Regulations, Subpart 8372, Sections 0–3 and 0–5(g). Authority for the establishment of an LTVA program is contained in title 43, Code of Federal Regulations, Subpart 8372, Section 1, and for the payment of fees in title 36, Code of Federal Regulations, Subpart 71. The authority for establishing supplementary rules is contained in title 43, Subpart 8365, Section 1–6. The LTVA supplementary rules have been developed to meet the goals of individual resource management plans. These rules will be available in each local office having jurisdiction over the lands, sites, or facilities affected, and will be posted near and/or within the lands, sites, or facilities affected. Violations of supplementary rules are punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

The following are the supplementary rules for the designated LTVAs and are in addition to rules of conduct set forth in Title 43, Code of Federal Regulations, Subpart 8365, Section 0.1 through 1–7.

The following supplementary rules apply year-long to all public land users who enter the LTVAs.

1. *The Permit.* A permit is required to camp in a designated LTVA between September 15 and April 15. The permit authorizes the permittee to camp within any designated LTVA using those camping or dwelling unit(s) indicated on the permit between the period from September 15 to April 15. There are two types of permits: Long-term and short-visit. The long-term permit fee is $100.00, U.S. funds only, for the entire season and any part of the season. The short-term permit is $20.00 for seven (7) consecutive days. The short-visit permit may be renewed an unlimited number of times for the cost of $20.00 for seven consecutive days. *No refunds are made on permit fees.*

2. *The Permit.* To be valid, the short-visit permit decal or long-term permit decal must be affixed at the time of purchase, with the adhesive backing, to the bottom right-hand corner of the windshield of all transportation vehicles and in a clearly visible location on all camping units. A maximum of two (2) secondary vehicles is permitted.

3. *Permit Transfers.* The permit may not be reassigned or transferred by the permittee.

4. *Permit Revocation.* An authorized BLM officer may revoke, without reimbursement, any LTVA permit issued to any person when the permittee violates any BLM rule or regulation, or when the permittee, permittee's family, or guest's conduct is inconsistent with the goal of BLM's LTVA Program. Failure to return any LTVA permit to an authorized BLM officer upon demand is a violation of this supplementary rule. Any permittee whose permit is revoked must remove all property and leave the LTVA system within 12 hours of notice. The revoked permittee will not be allowed into any other LTVA in Arizona or California for the remainder of the LTVA season.

5. *Unoccupied Camping Units.* Camping units or campsites must not be left unoccupied within any LTVA for periods of greater than 5 days unless approved in advance by an authorized BLM officer.

6. *Parking.* For your safety and privacy, you must maintain a minimum of 15 feet of space between dwelling units.

7. *Removal of Wheels and Campers.* Campers, trailers, and other dwelling units must remain mobile. Wheels must remain on all wheeled vehicles. Pickup campers may be set on jacks manufactured for that purpose.

8. *Quiet Hours.* Quite hours are from 10 p.m. to 6 a.m. in accordance with applicable state time zone standards, or as otherwise posted.

9. *Noise.* Operation of audio devices or motorized equipment, including generators, in a manner that makes unreasonable noise as determined by the authorized BLM officer is prohibited. Amplified music is allowed only within La Posa and Imperial Dam LTVAs and only in locations designated by BLM or when approved in advance by an authorized BLM officer.

10. *Access.* Do not block roads or trails commonly in public use with your parked vehicles, stones, wooden barricades, or by any other means.

11. *Structures and Landscaping.* Fixed structures of any type are prohibited and temporary structures must conform to posted policies. This includes, but is not limited to fences, dog runs, storage units, and windbreaks. Alterations to the natural landscape are not allowed. Painting rocks or defacing or damaging any natural or archaeological feature is prohibited.

12. *Livestock.* Boarding of livestock (horses, cattle, sheep, goats, etc.) within LTVA boundaries is permitted only when approved in advance by an authorized BLM officer.

13. *Pets.* Pets must be kept on a leash at all times. Keep an eye on your pets. Unattended and unwatched pets may fall prey to coyotes or other desert predators. Pet owners are responsible for clean-up and sanitary disposal of pet waste.

14. *Cultural Resources.* Do not disturb any archaeological or historical values including, but not limited to, petroglyphs, ruins, historic buildings, and artifacts that may occur on public lands.

15. *Trash.* Place all trash in designated receptacles. Public trash facilities are shown in the LTVA brochure. Depositing trash or holding-tank sewage in vault toilets is prohibited. An LTVA permit is required for trash disposal within all LTVA campgrounds except for the Mule Mountain LTVA. The changing of motor oil, vehicular fluids, or disposal and possession of these used substances within the LTVA is strictly prohibited.

16. *Dumping.* Absolutely no dumping of sewage, gray water, or garbage on the ground. This includes motor oil and any other waste products: Federal, State, and county sanitation laws and county ordinances specifically prohibit these practices. Sanitary dump station locations are shown in the LTVA brochure. LTVA permits are required for dumping within all LTVA campgrounds except for the Midland LTVA.

17. *Self-Contained Vehicles.* In Pilot Knob, Midland, Tamarisk, and Hot Springs LTVAs, camping is restricted to self-contained camping units only. Self-contained units must have a permanent affixed waste water holding tank of 10-gallon minimum capacity. Port-a-potty systems, or systems which utilize portable holding tanks, or permanent holding tanks of less than 10-gallon capacity are not considered to be self-contained. The La Posa, Imperial Dam, and Mule Mountain LTVAs are restricted to self-contained camping units, except within 500 feet of a vault or rest room.

18. *Campfires.* Campfires are permitted in LTVAs subject to all local,

state, and Federal regulations. Comply with posted rules.

19. *Wood Collection.* No wood collection is permitted within the LTVAs. Possession of native firewood is prohibited. Please contact the nearest BLM office for current regulations concerning wood collection.

20. *Speed Limit.* The speed limit in LTVAs is 15 mph or as otherwise posted.

21. *Off-Highway Vehicle use.* Motorized vehicles must remain on existing roads, trails, and washes.

22. *Vehicle use.* It is prohibited to operate any vehicle in violation of state or local laws and regulations relating to use, standards, registration, operation, and inspection.

23. *Firearms.* The discharge or use of firearms or weapons is prohibited inside or within ½ mile of the LTVAs.

24. *Vending Permits.* Any commercial activity requires a vending permit. Please contact the nearest BLM office for information on vending or concession permits.

25. *Aircraft use.* Landing or taking off of aircraft, including ultralights and hot air balloons, is prohibited in LTVAs.

26. *Perimeter Camping.* No camping is allowed within 1 mile of Hot Spring, Tamarisk, Pilot Knob LTVAs and within 2 miles of Midland LTVA.

27. *Hot Spring Spa and Day Use Area.* Food, beverages, glass containers, soap, and pets are prohibited within the fenced-in area at the Hot Springs Spa. Day use hours are 5 a.m. to midnight.

28. *Mule Mountain LTVA.* All camping within Wiley's Well and Coon Hollow Campgrounds is restricted to designated sites only and is limited to one (1) camping or dwelling unit per site.

29. *Imperial Dam and La Posa LTVAs.* Overnight occupancy is prohibited in desert washes in Imperial Dam and La Posa LTVAs.

30. *La Posa LTVA.* Access to La Posa LTVA is restricted to legal access roads along U.S. Highway 95. Construction and use of other access points are prohibited. This includes removal or modification of barricades, such as fences, ditches, and berms.

31. *Posted Rules.* Observe all posted rules. Individual ITVAs may have additional specific rules. If posted rules differ from these supplemental rules, the posted rules take precedence.

32. *Other Laws.* LTVA permit holders are required to observe all Federal, state, and local laws and regulations applicable to the LTVA and shall keep the LTVA and, specifically, their campsite, in a neat, orderly, and sanitary condition.

33. *Length of Stay.* Length of stay in a LTVA between April 16 and September 14 is limited to 14 days in a 28-day period. After the 14th day of occupation campers must move outside of a 25-mile radius of the previous location.

Violation of these supplementary rules may result in revocation of the LTVA permit, issuance of a citation, and/or arrest which may require appearance before a U.S. Magistrate or penalties up to $100,000 and/or one-year imprisonment.

This notice is published under the authority of Title 43, Code of Federal Regulations, Subpart 8365, Section 1–6.

Dated: August 16, 1999.

Gail Acheson,

Field Manager, Yuma Field Office.

James G. Kenna,

Field Manager, Palm Springs-South Coast Field Office.

Greg Thomsen,

Field Manager, El Centro Field Office.

[FR Doc. 99–21976 Filed 8–31–99; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–08–1220–00]

Moffat Bridge Access Site, MT

AGENCY: Bureau of Land Management, Lewistown Field Office, Interior.

ACTION: Notice of proposed supplementary rules.

SUMMARY: Notice is hereby given that effective 30 days after being published, these supplementary rules will be in effect, unless protested by substantive adverse comments. The following supplementary rules and regulations will be in effect at the BLM Moffat, Pugsley and Lowry Bridge Access Sites.

Moffat Bridge Access Site

Motorized vehicles on designated roads and trails only. No off road vehicle travel allowed.

Walk in or float in camping allowed April 1 through September 1. The area is closed to camping September 2 through March 31.

Access road open June 1 through September 1.

Camping limited to three (3) days and three (3) nights.

No fireworks allowed.

No firearms or shooting allowed unless in legal pursuit of a Montana game species (big game, waterfowl and upland bird only).

No littering. Pack in/pack out area.

Quite hours are from 10 p.m. to 7 a.m.

Use only down and dead firewood for campfires. Area closed to firewood permit collection.

Pugsley Bridge Access Site

Motorized vehicles on designated roads and trails only. No off road vehicle travel allowed.

No overnight camping or use. Day use only.

No hunting or shooting of firearms, archery or fireworks. No littering. Pack in/pack out area.

Lowry Bridge Access Site

Motorized vehicles on designated roads and parking areas only. No off road vehicle travel allowed.

Camping allowed year around in the fenced parking/camping area.

Walk in or float in camping allowed on adjacent BLM lands from December 1 through August 31. The adjacent BLM lands are closed to all camping from September 1 through November 30.

Camping limited to three (3) days and three (3) nights.

No hunting or shooting of firearms, archery or fireworks within the fenced parking/camping area.

No firearms or shooting allowed on the entire Lowry Bridge Access Site unless in legal pursuit of a Montana game species (big game, waterfowl, and upland bird only). This is a shotgun or archery only area. No rifle or handgun shooting allowed.

No fireworks allowed.

Quiet hours are from 10 p.m. until 7 a.m.

Any person convicted of violating these restrictions shall be punished by a fine not to exceed $1,000.00 or by imprisonment not to exceed one year or both (43 CFR 8360.0–7).

FOR FURTHER INFORMATION CONTACT: Lewistown Field Office, P.O. Box 1160, Lewistown, Montana 59457.

Dated: August 13, 1999.

David L. Mari,

Field Manager.

[FR Doc. 99–21621 Filed 8–31–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Continuation of the Grassland Bypass Project

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) and notice of public scoping meetings.

SUMMARY: The Bureau of Reclamation (Reclamation) and the San Luis and Delta-Mendota Water Authority (Authority) are preparing a joint EIS/EIR, pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) to evaluate the proposal to continue the Grassland Bypass Project (Project) until 2009. The purpose of the proposed project is as follows:

1. To continue separating unusable agricultural drainage water from wetland water supply conveyance channels and discharge from the Grassland Drainage Area for the period 2001 to 2009; and

2. To facilitate drainage management that maintains the viability of agriculture in the project area and promotes continuous improvement in water quality in the San Joaquin River.

Existing drainage management in the Grassland Drainage Area is based upon use of a segment of the San Luis Drain under terms and conditions of a Use Agreement between the Authority and Reclamation. Current drainage management is also regulated by Waste Discharge Requirements (WDRs) issued by the Regional Water Quality Control Board and by the Basin Plan. The Use Agreement expires on September 30, 2001, and the WDRs require submission of a Report of Waste Discharge for discharges beyond that date. The proposed Project is needed to assure that any future use of the San Luis Drain beyond September 30, 2001, is: (1) Consistent with long-term drainage options, and (2) provides for compliance with applicable water quality objectives.

DATES: A series of public scoping meetings will be held to solicit public input on alternatives, concerns, and issues to be addressed in the EIS/EIR as follows:

- Monday, September 27, 1999, 1:30 to 4:30 p.m., Los Banos CA
- Wednesday, September 29, 1999, 7:00 to 10:00 p.m., Walnut Creek CA
- Thursday, September 30, 1999, 1:30 to 4:30 p.m., Sacramento CA.

Written comments on the scope of the EIS/EIR may be mailed to Reclamation at the address below by October 6, 1999. Comments received after this date will be considered but may not be included in the resulting EIS/EIR scope.

ADDRESSES: The meeting locations are:

- Los Banos at the Miller-Lux Building, Floor 1, 830 6th Street, Los Banos CA
- Walnut Creek at the Walnut Creek City Hall, City Council Chamber, 1666 North Main Street, Walnut Creek CA
- Sacramento at the Best Western Expo Inn, Expo Conference Room, 1413 Howe Avenue, Sacramento CA

Written comments on the scope of the EIS/EIR should be sent to Mr. Michael Delamore, Bureau of Reclamation, South-Central California Area Office, 2666 N. Grove Industrial Drive, Suite 106, Fresno CA 93727; telephone: (559) 487–5039; fax (559) 487–5130.

FOR FURTHER INFORMATION CONTACT: Mr. Delamore at the above address or by telephone at (559) 487–5039.

SUPPLEMENTARY INFORMATION: The Project and the Grassland Drainage Area are located in Merced and Fresno Counties in the Central Valley of California. The Project is designed to improve water quality in the channels used to deliver water to wetland habitat areas. Prior to 1996 when the interim project was implemented, subsurface agricultural drainage water was conveyed through those channels, which limited their availability to deliver fresh water to the wetlands.

The Project consolidates subsurface drainage flows on a regional basis and utilizes a portion of the Federal San Luis Drain (Drain) to convey the flows around wetland habitat areas. The Project collects drainage water from the 97,000-acre Grassland Drainage Area and places it into the Drain at a point near Russell Avenue (Milepost 105.72, Check 19).

The original Grassland Bypass Project was for interim use of a portion of the Drain for conveyance of drainage water through the Grassland Water District and adjacent Grassland area. It was implemented in November 1995 through an ''Agreement for Use of the San Luis Drain'' (Agreement No. 6–07–20–w1319) between Reclamation and the Authority. A Finding of No Significant Impact (FONSI No. 96–1–MP) was adopted by Reclamation for the original project, and environmental commitments set forth in the FONSI were made an integral component of the Use Agreement. The Use Agreement and its renewal in 1999 allow for use of the Drain for a 5-year period that concludes September 30, 2001. Continued use of the Drain after the term of the existing Use Agreement requires additional environmental compliance with NEPA and CEQA.

In March 1996, the Grassland Area Farmers (GAF) formed a regional drainage entity under the umbrella of the Authority to implement the Project and manage subsurface drainage within the Grassland Drainage Area. Participants include the Broadview Water District, Charleston Drainage District, Firebaugh Canal Water District, Pacheco Water District, Panoche Drainage District, Widren Water District, and the Camp 13 Drainers (an association of landowners located in the Central California Irrigation District). The GAF's drainage area is approximately 97,000 gross acres of irrigated farmland on the westside of the San Joaquin Valley and is known as the Grassland Drainage Area.

In September 1998, the GAF and the Authority developed a long-term drainage management strategy and plan of implementation. The Long-Term Drainage Management Plan for the Grassland Drainage Area (Plan) was submitted to the Regional Water Quality Control Board as required by Waste Discharge Requirement Order 98–171 for public review on September 30, 1998, and updated July 1, 1999. The Plan outlines several steps and measures to achieve water quality objectives in the Basin Plan and includes continuation of the Project. The long-term Plan consists of a combination of both short-and long-term approaches (GAF and Authority, September 1998). Presently, available mechanisms for the management and control of subsurface drainage discharges are inadequate to both maintain long-term viable agriculture and meet water quality objectives for selenium (and possibly for salinity and other constituents). The Project is needed in the short-term (2001–2009) to allow time for additional research and evaluation of long-term options. The proposed Project needs to be consistent with long-term drainage options and not preclude any of these options from being implemented.

The Project also includes a monitoring program with biological, water quality, and sediment components. Results of the monitoring program are reviewed by an Oversight Committee quarterly, or as necessary, to implement the Use Agreement. The Project would not involve new construction or significant alteration of canals and other drainage facilities, but instead would rely on existing canals and waterways. Minor alterations of existing facilities would be necessary in order to collect subsurface agricultural discharges from up to 5,000 acres of adjoining lands if these are added to a new Use Agreement. The proposed project is a major component of the Authority's long-term drainage management plan.

If special services are required at the meeting, please contact Janet Harp at (916) 978–5112 as far in advance of the meeting as possible, but no later than September 20, 1999, to enable the agency to secure the needed services.

Dated: August 24, 1999.

Neil Stressman,

Acting Deputy Regional Director.

[FR Doc. 99–22717 Filed 8–31–99; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–420]

Certain Beer Products; Notice of a Commission Determination Not To Review an Initial Determination Terminating One Respondent on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') granting the joint motion of complainant Anheuser-Busch, Inc. (''Anheuser-Busch'') and respondent Argen-Wine Imports, Ltd. (''Argen'') to terminate Argen from the above-referenced investigation on the basis of a consent order.

FOR FURTHER INFORMATION: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3105. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On May 27, 1999, the Commission instituted this investigation based on a complaint filed by Anheuser-Busch, alleging a violation of section 337 in the importation and sale of certain beer products by reason of infringement of U.S. Trademark Registration Nos. 922,481, 952,277, or 666,637. 64 FR 30058. Two firms were named as respondents: Argen and Budejovicky Budvar, N.P.

On July 2, 1999, complainant Anheuser and respondent Argen filed a joint motion to terminate the investigation as to Argen on the basis of a consent order stipulation and proposed consent order. The remaining respondent, Budvar, opposed the motion. The Commission investigative attorney supported the motion.

On July 26, 1999, the ALJ issued an ID (Order No. 6) terminating the investigation as to Argen based on the joint stipulation and proposed consent order. No party petitioned for review of the ID pursuant to 19 CFR 210.43(a), and the Commission found no basis for ordering a review on its own initiative pursuant to 19 CFR 210.44. The ID thus became the determination of the Commission pursuant to 19 CFR 210.42(h)(3).

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

By order of the Commission.

Issued: August 26, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–22797 Filed 8–31–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. AA1921–197 (Review); 701–TA–231, 319–320, 322, 325–328, 340, 342, and 348–350 (Review); and 731–TA–573–576, 578, 582–587, 604, 607–608, 612, and 614–618 (Review)]

Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty and antidumping duty orders on certain carbon steel products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on certain carbon steel products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is October 21, 1999. Comments on the adequacy of responses may be filed with the Commission by November 12, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Elizabeth Haines (202–205–3200), or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.

On the dates listed below, countervailing duty and antidumping

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–034. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

duty orders on the subject imports were issued:

Order date and product/Country	Inv. No.	F.R. cite
6/13/79 Carbon steel plate/Taiwan	AA1921–197	44 F.R. 33877
8/17/93 Cut-to-length carbon steel plate/Belgium	701–TA–319	58 F.R. 43749
8/17/93 Cut-to-length carbon steel plate/Brazil	701–TA–320	58 F.R. 43751
8/17/93 Cut-to-length carbon steel plate/Germany	701–TA–322	58 F.R. 43756
8/17/93 Cut-to-length carbon steel plate/Mexico	701–TA–325	58 F.R. 43755
8/17/93 Cut-to-length carbon steel plate/Spain	701–TA–326	58 F.R. 43761
8/17/93 Cut-to-length carbon steel plate/Sweden	701–TA–327	58 F.R. 43758
8/17/93 Cut-to-length carbon steel plate/United Kingdom	701–TA–328	58 F.R. 43748
8/19/93 Cut-to-length carbon steel plate/Belgium	731–TA–573	58 F.R. 44164
8/19/93 Cut-to-length carbon steel plate/Brazil	731–TA–574	58 F.R. 44164
8/19/93 Cut-to-length carbon steel plate/Canada	731–TA–575	58 F.R. 44162
8/19/93 Cut-to-length carbon steel plate/Finland	731–TA–576	58 F.R. 44165
8/19/93 Cut-to-length carbon steel plate/Germany	731–TA–578	58 F.R. 44170
8/19/93 Cut-to-length carbon steel plate/Mexico	731–TA–582	58 F.R. 44165
8/19/93 Cut-to-length carbon steel plate/Poland	731–TA–583	58 F.R. 44166
8/19/93 Cut-to-length carbon steel plate/Romania	731–TA–584	58 F.R. 44167
8/19/93 Cut-to-length carbon steel plate/Spain	731–TA–585	58 F.R. 44167
8/19/93 Cut-to-length carbon steel plate/Sweden	731–TA–586	58 F.R. 44168
8/19/93 Cut-to-length carbon steel plate/United Kingdom	731–TA–587	58 F.R. 44168
10/11/85 Cold-rolled carbon steel flat products/Sweden	701–TA–231	50 F.R. 41547
8/17/93 Cold-rolled carbon steel flat products/Germany	701–TA–340	58 F.R. 43756
8/17/93 Cold-rolled carbon steel flat products/Korea	701–TA–342	58 F.R. 43752
8/19/93 Cold-rolled carbon steel flat products/Germany	731–TA–604	58 F.R. 44170
8/19/93 Cold-rolled carbon steel flat products/Korea	731–TA–607	58 F.R. 44159
8/19/93 Cold-rolled carbon steel flat products/Netherlands	731–TA–608	58 F.R. 44172
8/17/93 Corrosion-resistant carbon steel flat products/France	701–TA–348	58 F.R. 43759
8/17/93 Corrosion-resistant carbon steel flat products/Germany	701–TA–349	58 F.R. 43756
8/17/93 Corrosion-resistant carbon steel flat products/Korea	701–TA–350	58 F.R. 43752
8/19/93 Corrosion-resistant carbon steel flat products/Australia	731–TA–612	58 F.R. 44161
8/19/93 Corrosion-resistant carbon steel flat products/Canada	731–TA–614	58 F.R. 44162
8/19/93 Corrosion-resistant carbon steel flat products/France	731–TA–615	58 F.R. 44169
8/19/93 Corrosion-resistant carbon steel flat products/Germany	731–TA–616	58 F.R. 44170
8/19/93 Corrosion-resistant carbon steel flat products/Japan	731–TA–617	58 F.R. 44163
8/19/93 Corrosion-resistant carbon steel flat products/Korea	731–TA–618	58 F.R. 44159

The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original 1979 antidumping determination concerning carbon steel plate from Taiwan, the Commission found one Domestic Like Product: Carbon steel plate. In its original 1985 countervailing duty determination concerning cold-rolled carbon steel flat products from Sweden, the Commission found one Domestic Like Product: cold-rolled carbon steel sheet. In its original 1993 determinations, the Commission found in the affirmative for four Domestic Like Products: (1) Cut-to-length plate, (2) cold-rolled carbon steel flat products, (3) corrosion-resistant carbon steel flat products other than clad plate, and (4) corrosion-resistant clad plate. One Commissioner defined the Domestic Like Product differently. For purposes of this notice, you should report information separately on each of the following Domestic Like Products: (1) Carbon steel plate, (2) cut-to-length plate, (3) cold-rolled carbon steel flat products, (4) corrosion-resistant carbon steel flat products other than clad plate, and (5) corrosion-resistant clad plate.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original 1979 antidumping determination concerning carbon steel plate from Taiwan, the Commission found one regional Domestic Industry: producers of carbon steel plate located in the west coast States of California, Washington, and Oregon. Certain Commissioners defined the Domestic Industry differently. In its original 1985 countervailing duty determination concerning cold-rolled carbon steel flat products from Sweden, the Commission found one Domestic Industry: producers of cold-rolled carbon steel sheet. In its original 1993 determinations, the Commission found in the affirmative for four Domestic Industries: (1) Producers of cut-to-length plate, (2) Producers of cold-rolled carbon steel flat products, (3) producers of corrosion-resistant carbon steel flat

products other than clad plate, and (4) producers of corrosion-resistant clad plate. One Commissioner defined the Domestic Industry differently. For purposes of this notice, you should report information separately on each of the following Domestic Industries: (1) Producers of carbon steel plate located in California, Washington, and Oregon, (2) producers of cut-to-length plate, (3) producers of cold-rolled carbon steel flat products, (4) producers of corrosion-resistant carbon steel flat products other than clad plate, and (5) producers of corrosion-resistant clad plate.

(5) The *Order Dates* are the dates that the countervailing duty and antidumping duty orders under review became effective. In these reviews, the Order Dates are as shown in the preceding tabulation.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 21, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is November 12, 1999. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to Provide Requested Information

Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

Please provide the requested information separately for each Domestic Like Product, as defined above, and for each of the products identified by Commerce as Subject Merchandise. If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing duty and antidumping duty orders on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely

impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since the year the petitions were filed. The Subject Merchandise, the Subject Countries, and the years the petitions were filed are listed below:

Subject Merchandise/Subject Country(ies)	Years
Carbon steel plate/Taiwan	1978
Cold-rolled carbon steel flat products/ Sweden	1984
Cut-to-length carbon steel plate/Belgium, Brazil, Canada, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, and United Kingdom	1992
Cold-rolled carbon steel flat products/ Germany, Korea, and Netherlands	1992
Corrosion-resistant carbon steel flat products/Australia, Canada, France, Germany, Japan, and Korea	1992

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of each Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of each Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: August 26, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–22788 Filed 8–31–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 303–TA–23, 731–TA–566–570, and 731–TA–641 (Reconsideration) and Investigations Nos. 751–TA–21–27]

Ferrosilicon From Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela

Determinations

On the basis of the record [1] developed in these investigations, the United States International Trade Commission determines, upon reconsideration, that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela of ferrosilicon, provided for in subheadings 7202.21.10, 7202.21.50, 7202.21.75, 7202.21.90, and 7202.29.00 of the Harmonized Tariff Schedule of the United States, that have been found

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

by the Department of Commerce to be subsidized by the Government of Venezuela and sold in the United States at less than fair value (LTFV).

The Commission's determinations in the reconsideration proceedings render the changed circumstances investigations that relate to the original determinations moot. Accordingly, the United States International Trade Commission hereby terminates investigations Nos. 751–TA–21–27 concerning ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela.

Background

On April 24, 1998, the Commission received a request to review its affirmative determination as it applied to imports of ferrosilicon from Brazil (the request)[2] in light of changed circumstances, pursuant to section 751(b) of the Act. The request was filed by counsel on behalf of Associação Brasileira dos Productores de Ferroligas e de Silicio Metalico (ABRAFE), Companhia Brasileira Carbureto de Calcio (CBCC), Companhia de Ferroligas de Bahia (FERBASA), Nova Era Silicon S/A, Italmagnesio S/A-Industria e Comercio, Rima Industrial S/A, and Companhia Ferroligas Minas Gerais (Minasligas).

Pursuant to section 207.45(b) of the Commission's Rules of Practice and Procedure,[3] the Commission published a notice in the **Federal Register** on May 20, 1998,[4] requesting comments as to whether the alleged changed circumstances warranted the institution of review investigations. The Commission received comments in support of the request from C.V.G. Venezolana de Ferrosilicio C.A. (Fesilven), a Venezuelan producer of ferrosilicon; General Motors Corp., a purchaser of ferrosilicon; and the Governments of Brazil and Kazakhstan. Comments in opposition to the request were received from counsel on behalf of AIMCOR, American Alloys, Inc., Elkem Metals Co., and SKW Metals & Alloys, Inc., U.S. producers of ferrosilicon. After reviewing these comments, the Commission determined on July 28, 1998, that certain of the alleged changed circumstances were sufficient to warrant review investigations.[5] Among the issues that were briefed by the parties to the investigations was the fact that, between 1995 and 1997, two members of the domestic industry pleaded guilty to conspiring to fix prices of commodity ferrosilicon products during the periods of the Commission's original investigations, and a third member, and an officer of that member, were convicted of conspiring to fix prices of commodity ferrosilicon products during the periods of the Commission's original investigations.

On May 21, 1999, the Commission suspended investigations Nos. 751–TA–21–27, and instituted proceedings to reconsider its determinations in countervailing duty investigation No. 303–TA–23 (Final) concerning ferrosilicon from Venezuela and antidumping investigations Nos. 731–TA–566–570 and 731–TA–641 (Final) concerning ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela.[6]

The Commission transmitted its determination in these investigations to the Secretary of Commerce on August 24, 1999. The views of the Commission are contained in USITC Publication 3218 (August 1999), entitled Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela: Investigations Nos. 303–TA–23, 731–TA–566–570, and 731–TA–641 (Reconsideration).

By order of the Commission.

Issued: August 25, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–22795 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–DS–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–401 (Preliminary) and 731–TA–852–855 (Preliminary)]

Certain Structural Steel Beams From Germany, Japan, Korea, and Spain

Determinations

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Korea of certain structural steel beams,[2] provided for in subheadings 7216.32.00, 7216.33.00, 7216.50.00, 7216.61.00, 7216.69.00, 7216.91.00, 7216.99.00, 7228.70.30, and 7228.70.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Korea.

The Commission further determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Japan and Korea of certain structural steel beams,[3] provided for in subheadings 7216.32.00, 7216.33.00, 7216.50.00, 7216.61.00, 7216.69.00, 7216.91.00, 7216.99.00, 7228.70.30, and 7228.70.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

The Commission further determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Germany and Spain of certain structural steel beams,[4] provided for in subheadings 7216.32.00, 7216.33.00, 7216.50.00, 7216.61.00, 7216.69.00, 7216.91.00, 7216.99.00, 7228.70.30, and 7228.70.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at LTFV.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from

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[2] The request concerned only imports from Brazil. However, as the alleged changed circumstances predominantly relate to the domestic industry, the Commission solicited comments on the possibility of self-initiating reviews of the outstanding orders on imports from China, Kazakhstan, Russia, Ukraine, and Venezuela.

[3] 19 CFR 207.45(b).

[4] 63 FR 27747.

[5] *See* 63 FR 40314–15.

[6] 64 FR 28212, May 25, 1999. Chairman Bragg dissenting.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman Marcia E. Miller makes a negative determination on allegedly subsidized imports from Korea. Commissioner Carol T. Crawford makes an affirmative determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports from Korea.

[3] Vice Chairman Marcia E. Miller makes a negative determination on imports from Japan and Korea allegedly sold at LTFV. Commissioner Carol T. Crawford makes an affirmative determination that there is a reasonable indication that an industry in the United States is materially injured by imports from Japan and Korea allegedly sold at LTFV.

[4] Chairman Lynn M. Bragg and Commissioner Carol T. Crawford dissenting.

the Department of Commerce (Commerce) of affirmative preliminary determinations in these investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On July 7, 1999, a petition was filed with the Commission and the Department of Commerce by Northwestern Steel & Wire Co., Sterling, IL; Nucor-Yamato Steel Co., Blytheville, AR; TXI-Chaparral Steel Co., Midlothian, TX; and The United Steelworkers of America AFL–CIO, Pittsburgh, PA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of certain structural steel beams from Korea and alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain structural steel beams from Germany, Japan, Korea, and Spain. Accordingly, effective July 7, 1999, the Commission instituted countervailing duty investigation No. 701–TA–401 (Preliminary) and antidumping investigations Nos. 731–TA–852–855 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 16, 1999 (64 FR 38476). The conference was held in Washington, DC, on July 28, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 23, 1999. The views of the Commission are contained in USITC Publication 3225 (September 1999), entitled Certain Structural Steel Beams from Germany, Japan, Korea, and Spain: Investigations Nos. 701–TA–401 (Preliminary) and 731–TA–852–855 (Preliminary).

By order of the Commission.

Issued: August 26, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–22796 Filed 8–31–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act

Notice is hereby given that on August 2, 1999, a proposed Consent Decree in *United States* v. *Aiken County Forfeited Land Commission and Aiken County, South Carolina,* Civil Action No. 1:99–0264–08 was lodged with the United States District Court for the District of South Carolina.

In this action the United States sought the recovery of past costs incurred in response to releases and threatened releases of hazardous substances at the Clearwater Finishing Superfund Site in Clearwater, Aiken County, South Carolina. The Consent Decree represents a settlement with two of the potential responsible parties listed in the Amended Complaint for violations of Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9607. Under the Consent Decree, the Aiken County Forfeited Land Commission and Aiken County, South Carolina has agreed to pay the United States $250,000.00. This Consent Decree represents the third settlement to be lodged with the Court regarding the Clearwater Finishing Superfund Site. The United States has incurred approximately $1,182,000.00. The Amended Complaint names two additional parties.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Aiken County Forfeited Land Commission and Aiken County, South Carolina,* D.J. Ref. Number 90–11–3–06135.

The proposed Consent Decree may be examined at the Office of the United States Attorney, for the District of South Carolina, First Union Building, 1441 Main Street, Suite 500, Columbia, South Carolina 29201, at U.S. EPA Region IV, 61 Forsyth Street, Atlanta, Georgia 30303, and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $4.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–22688 Filed 8–31–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant To The National Cooperative Research and Production Act of 1993—EMTEC: Enabling Technologies For Lean Manufacturing of Hardened Steel Components

Notice is hereby given that, on July 20, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), EMTEC: Enabling Technologies for Lean Manufacturing of Hardened Steel Components has file written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Delphi Automotive Systems, Dayton, OH; Torrington Company, Norcross, CA; Valenite, Madison Heights, MI; Third Wave, Minneapolis, MN; Saginaw Machine Systems, Inc., Saginaw, MI; Masco Tech, Royal Oak, MI; The George Woodruff School of Mechanical Engineering/ Georgia Institute of Technology, Atlanta, GA; Ohio State University, Columbus, OH; and Edison Materials Technology Center (EMTEC), Kettering, OH. The nature and objectives of the venture are to conduct research on Enabling

Technologies for Lean Manufacturing of Hardened Steel Components.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–22690 Filed 8–31–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant To The National Cooperative Research and Production Act of 1993—Siemens Westinghouse: Ceramic Matrix Composites For Advanced Engine Components

Notice is hereby given that, on July 20, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Siemens Westinghouse: Ceramic Matrix Composites for Advanced Engine Components has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties; and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Siemens Westinghouse Power Corporation, Orlando, FL; Engineered Ceramics, Incorporated, San Diego, CA; and Solar Turbines, Incorporated, San Diego, CA. The nature and objectives of the venture are to demonstrate the proof-of-concept viability for new ceramic matrix composite materials for gas turbine engines for the power generation industry under the subject Advanced Technology Program of NIST. The activities of the joint venture will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–22689 Filed 8–31–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention; Proposed Information Collection Activity; Proposed Collection; Comment Request

ACTION: Notice of information collection under review; New collection; Survey of youth in residential placement.

The Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP), has submitted the following information collection required for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until November 1, 1999.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Joseph Moone, 202–307–5929, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Survey of Youth in Residential Placement.

(3) *Agency form number:* None.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals, Youth under 20 years of age residing in a residential facility due to the actions or orders of the juvenile justice system.

Other: Business or other for-profit, not-for-profit institutions, or State, Local or Tribal Government.

This information will be collected as part of a standard data collection effort designed to monitor the characteristics and needs of youth in residential placement. The youth will be given a survey of at most one hour using audio computer assisted survey interview techniques. The facilities in which the youth reside will be asked to assist in drawing a sample of youth and in coordinating the administration of the survey in the facilities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 10,000 responses at 1 hour per response.

(8) *An estimate of the total public burden (in hours) associated with the collection:* 10,000 annual burden hours.

If additional information is required contact: Mr. Robert Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: August 27, 1999.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 99–22714 Filed 8–31–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Solicitation for Grant Applications (SGA) H–1B Technical Skills Training Grants; Correction

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice; correction.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** of August 16, 1999, concerning the availability of grant funds for skill training programs for unemployed and

employed workers. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Diemle Phan, Grants Management Specialist, Division of Federal Assistance, Fax (202) 219–8739.

Correction

In the **Federal Register** of August 16, 1999, in FR Doc. 99–21143, on page 44543, in the second column, correct the ''Dates'' caption to read:

DATES: Applications for grant awards will be accepted commencing August 16, 1999. The closing date for receipt of applications shall be November 1, 1999 at 4:00 p.m. (Eastern Time) at the address below.

Signed at Washington, DC, this 26th day of August, 1999.

Laura Cesario,

Grant Officer.

[FR Doc. 99–22739 Filed 8–31–99; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–107]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing:

NASA Case No. MSC–22883–1: Compact Dexterous Robotic Hand;
NASA Case No. MSC–22900–1: Advanced Structural and Inflatable Hybrid Spacecraft Module;
NASA Case No. MSC–22834–1: A Uni-Directional Cell Stretching Device;
NASA Case No. MSC–22871–1: Vapor Corrosion Cell;
NASA Case No. MSC–22738–1: Non-Intrusive Pressure Gauging Method;
NASA Case No. MSC–22679–1: Evaluation of Biofilms and the Effects of Biocides Thereon;
NASA Case No. MSC–22970–1: Solar Powered Refrigerator System;
NASA Case No. MSC–23041–1: Variable Specific Impulse Magnetoplasma Rocket Engine.

DATES: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Edward Fein, Patent Counsel, Johnson Space Center, Mail Code HA, Houston, Texas, 77058–3696; telephone (281) 483–0837.

Dated: August 25, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–22674 Filed 8–31–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–108)]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Planetary Protection Task Force

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Planetary Protection Task Force.

DATES: Monday, September 20, 1999, 1:00 p.m. to 5:15 p.m., Tuesday, September, 21, 1999, 8:30 a.m. to 5:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Conference Room, 6H46, 300 E Street, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. John Rummel, Code SR, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0702.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Review of Task Force Objectives
—International Activities in Planetary Protection
—Policy and Regulatory Aspects of Sample Return
—Muses-C Requirements
—Task Force Issues and Discussion

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: August 26, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–22675 Filed 8–31–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). This information collection was originally published on May 11, 1999. No comments were received.

DATES: Comments will be accepted until October 1, 1999.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0129.

Form Number: NA.

Type of Review: Revision to the currently approved collection.

Title: Corporate Credit Unions.

Description: Part 704 of NCUA's Rules and Regulations directs corporate credit unions to maintain records concerning their activities.

Respondents: Corporate credit unions.

Estimated No. of Respondents/ Recordkeepers: 38.

Estimated Burden Hours Per Response: 1,822 hours.

Frequency of Response: Reporting, Recordkeeping, On Occasion and Annually.

Estimated Total Annual Burden Hours: 69,236.

Estimated Total Annual Cost: $2,417,026.

By the National Credit Union Administration Board on August 26, 1999.

Hattie M. Ulan,

Acting Secretary of the Board.

[FR Doc. 99–22707 Filed 8–31–99; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewal

The NSF management official having responsibility for the NSB Public Service Award Committee (#5195) has determined that renewing this charter for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundaton (NSF), by 42 USC 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Authority for this Committee will expire on September 4, 2001, unless it is renewed. For more information, please contact Karen York, NSF, at (703) 306–1182.

Dated: August 26, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–22712 Filed 8–31–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Computational Infrastructure and Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Computational Infrastructure and Research (#1185).

Date and Time: September 9–10, 1999 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 320, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Charles H. Koelbel, Program Director, Advanced Computational Research Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1962.

Purpose of Meeting: provide recommendations and advice concerning Software proposals submitted to NSF for financial support.

Agenda: To review and evaluate Proposals in the Advanced Computational Research Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 26, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–22711 Filed 8–31–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348 and 50–364]

Southern Nuclear Operating Company, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–2 and NPF–8 issued to Southern Nuclear Operating Company, Inc. (SNC, or the licensee) for operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2, located in Houston County, Alabama.

The proposed amendments, requested by SNC in letters dated February 22, 1999, supplemented by letters dated March 19 and June 30, 1999, would revise the technical specifications (TS) to clarify surveillance requirements for the control room emergency filtration system, penetration room filtration system, storage pool ventilation, and radiation monitoring instrumentation. SNC also proposes to delete the containment purge exhaust filter.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to convert from ANSI N510–1980 to ASME N510-1989 for specific [Farley Nuclear Plant] FNP filtration surveillance testing requirements and related changes do not affect the probability of any accident occurring. The consequences of any accident will not be affected since the proposed changes will continue to ensure that appropriate and required surveillance testing for FNP filtration systems will be performed consistent with the revised accident analyses. The results of the fuel handling accident remain well within the guidelines of 10 CFR Part 100 and the doses due to a [loss-of-coolant-accident] LOCA, including [emergency core cooling system] ECCS recirculation loop leakage, remain within the guidelines of 10 CFR Part 100 and General Design Criterion [GDC] 19 of Appendix A to 10 CFR Part 50. Relocating specific testing requirements to the FNP [Final safety Analysis Report] FSAR has no effect on the probability or consequences of any accident previously evaluated since required testing will continue to be performed.

Therefore, the proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Testing differences between ANSI N510–1980 and ASME N510–1989 have been evaluated by SNC and none of the proposed changes have the potential to create an accident at FNP. ASME N510–1989 is referenced by the NRC in NUREG 1431. Testing the additional channels of radiation monitoring and verification of penetration room boundary integrity do not require the affected systems to be placed in configurations different from design. Thus, no new system design or testing configuration is required for the changes being proposed that could create the possibility of any new or different kind of accident from any accident previously evaluated. Relocating specific testing requirements to the FSAR has no effect on the possibility of creating a new or different kind of accident from any accident previously evaluated since it is an administrative change in nature.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

Conversion from the testing requirements of ANSI N510–1980 sections 10, 12, and 13 to ASME N510–1989 sections 10, 11, and 15

has been previously approved by the NRC at other nuclear facilities. ASME N510–1989 has been approved and endorsed by the NRC in NUREG 1431. The safety factor associated with the conservative charcoal adsorber laboratory test methods and dose calculations ensures that doses will continue to meet the guidelines of 10 CFR Part 100 and GDC 19 of Appendix A to 10 CFR Part 50. The enhanced testing of radiation monitoring instrumentation and the penetration room boundary integrity provide additional assurance that the acceptance criteria of the safety analyses and the resultant margins of safety are not reduced. Relocating specific testing requirements to the FSAR has no effect on the margin of plant safety since required testing will continue to be performed. Clarifying the 10[-]hour run with heaters on is consistent with the Improved TS language and accomplishes the purpose for the surveillance. Changing the heater capacity and flow rates has been factored into the dose calculations and are within the design capacities of the systems involved.

Therefore, SNC concludes based on the above, that the proposed changes do not result in a significant reduction of margin with respect to plant safety as defined in the Final Safety Analysis Report or the bases of the FNP technical specifications.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 1, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment

and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 22, 1999, supplemented by letters dated March 19 and June 30, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama.

Dated at Rockville, Maryland, this 26th day of August 1999.

For the Nuclear Regulatory Commission.

L. Mark Padovan,

Project Manager, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 40–08980]

Environmental Assessment, Finding of No Significant Impact, and Notice of Opportunity for a Hearing for Remediation of the Lakehurst, NJ Site

Summary and Conclusions

The environmental assessment (EA) reviews the environmental impacts of the decommissioning actions proposed by Heritage Minerals, Incorporated (HMI) of their Lakehurst, New Jersey facility. Based upon the NRC staff evaluation of the HMI Final Status Survey Plan (FSSP), dated November 3, 1997, it was determined that the proposed decommissioning can be accomplished in compliance with the NRC public and occupational dose limits, effluent release limits, and residual radioactive material limits. In addition, the approval of the proposed action, i.e., decommissioning of HMI's Lakehurst, New Jersey facility in accordance with the commitments in NRC license SMB–1541 and the FSSP (decommissioning plan), will not result in significant adverse impact on the environment.

1.0 Introduction

1.1 Background

Heritage Minerals, Inc. is the current holder of NRC radioactive source materials license SMB–1541 (NRC Docket 40–08980) for the possession of radioactive material resulting from operations at their facility located in Lakehurst, New Jersey. The license authorizes HMI to possess at any one time a maximum of 300 kg of uranium in the form of natural uranium as monazite and 15,000 kg of thorium in the form of natural thorium as monazite. Processing of licensed material is not authorized except incident to facility decommissioning activities and packaging materials for shipment.

In December 1996, HMI informed the NRC staff that it intended to decommission the Lakehurst, New Jersey facility. The licensee submitted the Final Status Survey Plan (FSSP or decommissioning plan) to the NRC for review on November 3, 1997. The license was renewed on May 26, 1998 to authorize possession, packaging, storage, and decommissioning in accordance with the FSSP and transfer of products and waste to authorized recipients. Prior to the renewal, a safety evaluation report (SER), which evaluated conformance of the proposed action with NRC regulations and regulatory guidance was prepared and the opportunity for a hearing was publicly noticed in the March 12, 1998, **Federal Register** Notice (63 Federal Register 12114). In response to NRC requests, in 1998–99, HMI provided additional information to clarify certain planned remediation activities. The NRC is considering a license amendment which include additional HMI commitments during facility decommissioning.

1.2 Purpose and Need for Proposed Action

NRC is considering approval of the FSSP to allow Heritage Minerals, Inc. to remove radioactive material attributable to licensed operations at the site, to levels that permit release of the property for unrestricted use and termination of radioactive source materials license SMB–1541.

1.3 Description of Proposed Action

The objective of HMI is to decontaminate and decommission the Lakehurst, NJ facility to permit release for unrestricted use and termination of NRC license SMB–1541. Decommissioning will involve remediation of buildings and other above-grade structures, decontamination of process equipment and sumps, excavation of soil containing monazite sands, and restoration of excavated areas. Soil and other radioactively contaminated materials will be transported to either a licensed disposal facility or recipient authorized to receive such material.

NRC staff reviewed the information provided by HMI in the FSSP describing the proposed decommissioning actions and, by letter dated March 16, 1999, requested additional information regarding specific areas that needed clarification. NRC staff concluded that the decommissioning plan (FSSP) and supplemental information (letters dated November 30, 1998, June 24, 1999, July 13, 1999 and August 17, 1999) from A.J. Thompson, Attorney for HMI, Inc., responding to NRC comments provided an adequate information base for assessing potential environmental impacts from the proposed action.

2.0 Facility Description/Operating History

2.1 Site Locale and Physical

Description The Heritage Minerals, Inc. site is located on Route 70 in Lakehurst, Manchester Township (Ocean County), New Jersey, in the Atlantic Coastal Plain. It encompasses an area of approximately 7000 acres, of which 1000–1200 acres were used for mining operations involving monazite.

Other areas remained undisturbed. The plant and production areas including mill tailings containing monazite (produced as a result of previous operations) occupied an estimated 500 acres. The monazite pile is located within a security fence and occupies approximately 700 cubic meters. Areas adjacent to the site are predominantly rural, with bands of existing or recently developed residential communities within Manchester Township.

In the Hydrogeologic Investigation Report prepared for HMI, Fellows, Read, & Associates, Inc. (1989) characterized the geology and hydrogeology of the facility. Geologic deposit formations consist of underlying sediments of stratified clay, silt, sand, and gravel on well-indurated bedrock. The topography is relatively flat, recontoured by surface mining of ilmenite surface deposits. Wetlands form the drainage of adjacent Wrangel Brook, which has an easterly streamflow. Two lakes were created along the Green Branch of Wrangel Brook as a result of mine dredging operations.

Groundwater flow occurs from areas located north and west of the site to east and northeast towards the tributaries of the Toms River. The Toms River and its tributaries represent the major groundwater discharge zones for the region. Local groundwater flow is from upland areas to lower areas where groundwater discharges to streams and wetlands. Site groundwater is recharged by precipitation and flows unconfined through underlying sands. The Green Branch, Michaels Branch, and Davenport Branch of Wrangel Brook serve as local discharge zones for shallow ground water, with subsequent discharge to the Toms River or Barnegat Bay.

2.2 Descriptions of Facility Operations

Between 1973 and 1982 the site was operated by ASARCO, Inc., for dredging and processing sand deposits to extract heavy minerals. The titanium mineral, ilmenite, was the primary mineral recovered by various physical separation methods. There was no chemical separation involved in the extraction and concentration processes. Heavy minerals, including monazite were pumped as slurry to a Wet Mill. At the Wet Mill, the heavy minerals were separated from the slurry, then stockpiled for dewatering, while the lighter fraction was returned to the dredge pond. The heavy mineral concentrate was heated in a Dry Mill, then screened to remove coarse material. The high conductivity of the titanium dioxide bearing minerals allowed electrical separation from other heavy minerals. Further magnetic refinement produced the final ilmenite product. The dry mill tailings containing essentially all the monazite from the heavy minerals concentrate were mixed with water and pumped to an area east of the dry mill building.

ASARCO ceased operations in 1982. Evaluation of residual materials by private companies for commercial use continued until the property was purchased by HMI in 1986. Plant facilities were leased to Mineral Recovery, Inc. (MRI), who performed operational testing for titanium recovery until 1987.

HMI assumed property control, conducting site operations under NRC license until 1990 when all production stopped. Operations were comparable to the ASARCO process, utilizing dry mill tailings as feed material. The tailings were mixed with water, pumped to the wet mill for mineral separation according to their conductive properties, proceeding through a dewatering and drying process. Minerals were recovered and sold as leucoxene and rutile (titanium dioxide products) and zircon. Licensable amounts of monazite were present throughout the electrical and magnetic separation processes. In early 1990, processing of feed materials continued followed by recycle of tailings from the MRI operations. Mill tailings containing monazite were deposited in a stockpile east of the dry mill. Due to economic conditions, HMI terminated all operations in August 1990. Approximately 700 cubic meters of stockpiled tailings remain licensed to HMI.

3.0 Radiological Status of the Facility

3.1 Structures and Equipment

HMI performed decontamination of building surfaces and disposed of contaminated equipment in 1990–1991. Subsequent radiation (screening) surveys were conducted of the interiors of the wet mill and dry mill. Process trains within each building were characterized according to their monazite content and operating history as affected or unaffected areas using NUREG/CR–5849, ''Manual for Conducting Radiological Surveys in Support of License Termination'' criteria. The methods used to dismantle and decontaminate process equipment in affected areas and for disposition of resultant materials are described in the FSSP. The same methods will be used for decontamination of building interiors prior to the final radiological survey and will serve as the basis for termination of NRC Source Material License SMB–1541.

The final release status surveys described in the FSSP will be performed in accordance with NUREG/CR–5849 criteria. Residual radioactive materials that exist in affected areas will meet current guidelines described in ''Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use for Termination of Byproduct, Source, and Special Nuclear Material Licenses,'' (U.S. Nuclear Regulatory Commission, Policy and Guidance Directive FC 83–23, 1983). Details regarding the radiological status of affected areas within the Wet and Dry Mill buildings are described in the next sections. At present, contaminated material containing monazite is being stored in the outdoor tailings pile. A final survey of affected areas will be required by NRC after residual material is removed and decontamination is complete.

Following review of the Heritage Minerals, Inc. site radiological characterization of structures and equipment, the NRC staff finds characterization was performed in accordance with NUREG/CR–5849. The NRC staff review of the FSSP also finds it adequate for remediating structures and equipment to radiological levels below the NRC guidelines for unrestricted release (Nuclear Regulatory Commission, 1983). The staff concludes no adverse environmental impacts will result from planned remediation of the site structures and equipment.

3.1.1 Wet Mill Building. The Wet Mill Building process equipment used to extract product materials from raw feed was grouped into affected and unaffected survey units. The majority of survey units including floors, lower walls, and western mill areas are unaffected. Mechanical separation units and feed sumps involving transfer or processing of product material containing monazite were identified in the FSSP as affected areas. Final radiological surveys of interior surfaces will be within allowable release limits for natural thorium, the primary contaminant of concern. Prior to release of equipment in affected areas for unrestricted use, the NRC release limit of 1,000 dpm/100 cm2 for average surface contamination and maximum release limit of 3,000 dpm/100 cm2 will be met.

3.1.2 Dry Mill Building. Equipment in the Dry Mill Building was used to extract product materials from the Wet Mill process feed. Consistent with Wet Mill Building survey units, Dry Mill Building equipment was also grouped into affected and unaffected areas. Most

areas of the Dry Mill involving monazite including floors, ceiling, and lower walls (up to two meters above floor level) are affected. These include dryers, high tension separators, and sumps. NRC surface contamination release limits are the same as those used for Wet Mill equipment.

3.2 Surface and Subsurface Soils

Radionuclide concentrations and direct radiation levels for surface and subsurface soils at the facility have been measured in the Wet Mill, Dry Mill, dust collectors, tailings (monazite) pile, and at various outdoor locations.

Direct radiation levels inside buildings and outdoor areas were routinely measured by HMI personnel since 1990. Direct gamma exposure rates at ground level and 1 meter above the surface were reported for the monazite pile and areas in and around the Wet and Dry Mills. Average monazite pile perimeter readings ranged between 300–1700 μR/hr up to 2000 μR/hr on the pile. Readings at outdoor locations around buildings were at or near background levels. The highest exposure rates were measured on storage drums located inside the security fence surrounding the pile, at levels up to 3000 μR/hr. Small amounts of residual material (unlicensed) exists from recycled ASARCO tailings deposits in adjoining owner controlled property locations. These areas showed direct gamma radiation readings ranging between 10–150 μR/hr and will not be included in the remediation. Normal background radiation levels for other facility production areas is 7–20 μR/hr.

In July 1996, Radiation Science, Inc. issued a Report of Site Background for HMI which included soil samples at a depth of six inches from undisturbed environment, representative of natural site conditions. Background levels were established by performing gamma spectral analysis for U–238 and Th–232 on 32 samples. Mean values reported for background samples was 0.31 pCi/gm for U–238 concentration and 0.25 pCi/gm for Th–232 concentration. Average dose rates measurements from areas where samples were taken was 3.0 μR/hr.

Sample analysis of soils taken from recycled tailings, an unused settling pond, plant tailings, and new feed materials did not exceed NRC limits for total uranium and thorium (i.e., 10 pCi/g above background) for unrestricted release. Only soil in the monazite pile was measured above licensable source material quantities, and showed total concentrations of Ra–226 and Ra–228 up to 1376 pCi/gm. The FSSP identifies these soils as the material to be considered for remediation activities.

Following review of the HMI site radiological characterization studies for soils, the NRC staff finds the characterization effort and FSSP adequate for determining areas of elevated radioactivity in soils that require remediation to limit concentrations to the NRC limits for unrestricted release (46 **Federal Register** 52061–52063).

3.3 Surface Water and Groundwater

Analyses for radioactivity of surface water samples collected from existing site monitoring wells and offsite streams were reported by Camp Dresser & McKee, Inc. in 1997 as part of the Mine Tailings Radiological Assessment Plan prepared for the New Jersey Department of Environmental Protection. Concentrations measured for groundwater samples were 2.0–7.0 pCi/l for gross alpha and under 2.0–5.0 pCi/l for gross beta. Results of surface water samples were 2.0–3.9 pCi/l gross alpha and 2.0–4.2 pCi/l gross beta. Due to the insoluble properties of monazite and generally low levels of radiological contamination identified in samples, no concern was found regarding dissolution of radioactivity into groundwater and surface water.

Following staff review of the characterization of surface waters and groundwater around the HMI site, the NRC staff concludes the characterization is adequate and radiological contamination of surface waters and groundwater is below levels that would be a concern for environmental impacts.

3.4 Air

HMI reported results from 1990 air sampling measurements in three locations of the Dry Mill taken by their contractor, Teledyne Isotopes. Air filters were analyzed for gross alpha activity using an alpha scintillation counter. Activity detected was assumed to be Th–232, with reported concentrations less than 1.6×10^{-12} μCi/ml. These concentrations were less than effluent concentrations limits allowed in 10 CFR Part 20, Appendix B, and are therefore found by NRC to be below levels that could lead to adverse environmental impacts. Dust and security control measures provide confidence that air quality will not be degraded during decommissioning activities to levels that exceed NRC limits in 10 CFR Part 20.

4.0 Evaluation of Proposed Methods for Decontamination and Dismantlement of Structures, Buildings, and Equipment

4.1 Decontamination of Buildings, Equipment, and Outdoor Areas

HMI's proposal for decontamination of buildings, equipment, and outdoor areas is provided in the FSSP, supplemented by additional letters clarifying remediation activities in response to NRC's request for additional information. In 1991, process equipment, Wet and Dry Mill buildings, and survey units with operating equipment suspected to contain radioactive material were cleaned and decontaminated. Decontamination methods used for mill equipment included high pressure washing, steaming, general wipe down and scrubbing, blowing, and dusting and sweeping of surfaces. Radiation surveys of buildings and areas around the monazite pile have been performed routinely by HMI since that time.

The FSSP describes the proposed decommissioning activities and methods for protecting workers and the public during removal of monazite contaminated soil. Residual radioactivity remaining inside buildings is confined to fine sand grains present on equipment surfaces. Affected survey units may require further decontamination prior to performing the final status survey. Areas that contain only loosely adhered contamination will be HEPA vacuumed to remove contaminants. Fixtures, tanks, pumps, high tension separators, piping, and heavy equipment will be isolated, disassembled, and decontaminated as necessary, then resurveyed prior to release for unrestricted use. Equipment that cannot be economically decontaminated will be resurveyed, and all equipment with contamination above the NRC limits for unrestricted release or equipment suspected to contain radioactive material will be treated as radioactive waste.

When removal of process equipment from mill buildings is completed, building characterization surveys will be conducted. Walls up to two meters and floors are to be surveyed in accordance with the FSSP. Those buildings that contain residual contamination will be decontaminated below NRC guideline values using the most economical and reliable methods available. HMI's objective is to free release all buildings above grade to allow demolition (if deemed necessary) of clean buildings. Decontamination of ground-level floors will include the top surface of the concrete slabs, if needed.

Material from demolition of ground-level floors and underlying soils will be surveyed for contamination and remediated.

Surface and subsurface soils with Th-232 concentrations greater than 10 pCi/g is restricted to the monazite pile. HMI proposes two excavations of materials with monazite concentrations greater than 10 pCi/g above background. Contaminated soil (monazite ore) will be excavated, placed into a hopper, and transferred to shipping containers. This will be followed by a second excavation of surface layer soil to be removed in a similar manner. A fenced security area near the existing pile will be established for staging of shipping containers and contaminated equipment prior to transportation off-site. After the second excavation, area radiation levels are expected to be reduced to no more than twice background. Excavation of soil to meet Th-232 cleanup criteria will also serve to remove residual uranium contamination because both contaminants are contained in the monazite-rich soil. Once remediated, the remaining soil will be resurveyed in a manner consistent with NRC-accepted methods to ensure residual thorium and uranium contamination meet the NRC unrestricted release criteria. Soil and other material will be transported from the site either to a licensed disposal facility or exported under NRC Export License XSOU8751, issued to HMI on May 2, 1997.

Under Condition 15 of Materials License SMB–1541, HMI cannot release for unrestricted use areas within plant buildings or the monazite pile without specific, written authorization from the NRC. Based on the NRC review of building and equipment decontamination methods described in the FSSP and supporting documents, NRC concludes that the methods are adequate for ensuring that equipment, buildings, and outdoor areas will meet the NRC guidelines for unrestricted use and no adverse environmental impacts will result from planned activities.

5.0 Decommissioning Alternatives and Impacts

5.1 No Action

No decommissioning action by HMI would constitute a violation of 10 CFR 40.42(d) requirements, which requires that licensees begin site decommissioning of buildings and outdoor areas that contain residual radioactivity after permanently ceasing principal activities. Impacts of the no-action alternative are maintaining an NRC license, which would significantly reduce options for future property use, and require perpetual care and security of the site in its current radiological condition to prevent radiation exposure to monazite contamination and unauthorized public access.

5.2 Proposed Action

The proposed action is the approval to implement the Heritage Minerals, Inc. Final Status Survey Plan, for decommissioning activities at the Lakehurst, New Jersey facility that will permit unrestricted use of the site and termination of License No. SMB–1541. Decommissioning the facility for unrestricted release allows productive use of the land in the future. Site remediation is expected to mitigate potential future environmental impacts attributable to existing radiological contamination resulting from past operations.

5.3 Alternatives to Proposed Action

Two alternatives to the proposed action are considered. The first alternative is to not release the site for unrestricted use and keep the property under license. This alternative is unfavorable because maintaining an NRC license for the site would provide negligible, if any, environmental benefit, but would greatly reduce options for future use of the property. The second alternative involves storage of excavated soils on-site for an indefinite period should HMI be unable to export or transfer the material for disposal. While on-site storage defers the costs associated with disposal at a licensed facility, it removes the property from productive use, resulting in a negative impact to the economic potential of the local area.

The NRC determines the proposed action to be more favorable than either no-action or alternatives to the proposed action.

6.0 Radiation Protection Program

6.1 Radioactive Waste Management and Transportation Program

The radioactive waste management program at the HMI site includes identification, characterization, segregation, packaging, labeling, manifesting, and transporting waste in accordance with NRC, U.S. Department of Transportation (DOT), and other applicable federal, state, and local regulations. Included as contaminated radioactive waste materials from decommissioning activities will be equipment, tools, process material, building debris, decontamination materials (rags, wipes, filters), decontamination waste, soils, residual process equipment waste (sludges), and used personal protective equipment.

Since HMI intends to comply with all applicable requirements, NRC finds the planned radioactive waste management and transportation programs adequate for the materials at the site, and no adverse environmental impacts are expected from waste management activities or transfer of the material offsite.

6.2 Technical and Environmental Specifications

6.2.1 Unrestricted Use Guidelines. Guidelines for unrestricted use for natural thorium and uranium for the Heritage Minerals, Inc. site are Option 1 in the 1981 Branch Technical Position on ''Disposal or Onsite Storage of Thorium or Uranium Wastes From Past Operations'' (46 FR 52061), and NRC ''Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use for Termination of Byproduct, Source, and Special Nuclear Material Licensees,'' Policy and Guidance Directive, FC 83–23. The unrestricted release criteria are identified in the table below.

SOIL RELEASE CRITERIAL [1]

Radionuclide	Maximum soil concentration (pCi/g)	Reference
Natural Thorium (Th-232 plus Th-228) if all daughters are in equilibrium	10	(46 *Federal Register* 52061–52063).
Natural Uranium Ores (U-238 plus U-234) if all daughters are present and in equilibrium	10	(46 FR 52061–52063).

[1] If only one radionuclide is present, the maximum concentration is the value listed in this table. If more than one radionuclide is present, however, the ratio between the measured concentration and the corresponding limit listed in this table is determined. The sum of such ratios for all radionuclides present must not exceed one.

6.2.2 Radiological Health and Safety Program. HMI will select a decommissioning contractor who will follow radiation protection procedures sufficient to administer the radiation protection program authorized by License SMB–1541. The radiation protection program has been routinely inspected by NRC staff and found to be well implemented. The proposed action is limited in scope and not expected to include unique health and safety issues outside the scope of the radiation protection program. NRC will conduct site inspections while decommissioning activities are in progress. NRC determines the radiation protection program adequate for the proposed action.

6.2.3 Corporate Organization and Management. The HMI site manager will function as the licensee representative of the decommissioning project to provide oversight for all project activities. The site manager's function is to coordinate scheduling and status reports with the contractor Project Manager (PM) and HMI legal advisor. The PM will maintain overall responsibility for performance of project operations for the duration of the project until decommissioning activities are completed. The PM and decommissioning workers report directly to the HMI technical and legal staff for all project related activities, management direction, and resolution of operational issues. Primary responsibility of the PM includes on-site workforce management to ensure agreed to work schedules are met. The HMI Radiation Safety Officer (RSO) will report to the site manager and continue to perform oversight of all radiological work-related activities throughout the decommissioning project.

From review of job descriptions and responsibilities involved in radiological safety during decommissioning, NRC determines that the designated functions are acceptable to implement the radiological safety program during proposed decommissioning activities.

6.2.4 Radiological Exposure Control. Areas where radioactive materials are used and stored will be posted to control exposures to workers and visitors and avoid the spread of contamination. Measures to be taken to ensure control of contamination include donning of anti-contamination clothing, personnel monitoring, and frequent area radiation surveys. External radiation monitoring will be conducted through the use of environmental dosimeters placed at strategic locations around the monazite pile and work areas. The need for and type of dosimetry for workers and visitors in radiologically controlled areas will be determined by the contractor, and may include issuance of a radiation work permit. The primary dosimeter will be the thermoluminescent dosimeter (TLD) for whole body exposure, however, other types such as extremity TLD's will be employed, as conditions warrant.

For activities that have the potential to generate dusts, airborne particulate monitoring will be performed to demonstrate compliance with 10 CFR Part 20 intake limits, determine whether precautionary measures are needed (engineering controls, use of respiratory equipment), and show how exposures are being maintained ALARA. To reduce the amount of airborne particulates during excavations, the monazite pile will be sprayed with water twice per day. For equipment decontamination within affected survey units, HEPA air filtration in the immediate work area will be used, as needed.

Resuspension and airborne transport of contaminated soil during excavations serves as the primary pathway for off-site releases from decommissioning activities. HMI proposes to measure air particulates in the downwind direction through the use of a high-volume air sampler. Workers involved in excavations will be required to wear respiratory protection until radiological airborne activity levels are determined. HMI does not expect the proposed action will result in the generation of off-site, airborne concentrations that would result in dose to a member of the public in excess of the dose limits in 10 CFR Part 20. Previous results of groundwater and surface water sampling have shown negligible dose contribution due to the low levels of radionuclides during site operations. Decommissioning activities will have no further impact, therefore, additional water sampling is not needed.

HMI's total dose estimates for a worker based on direct gamma exposure rate from airborne soil releases from excavation activities of the monazite pile of 1mR/h is 320 mRem, with dust inhalation dose at 6% of the annual limit of intake (ALI) for the duration of the proposed action. The off-site (public) annual dose limit in 10 CFR Part 20 is 100 mrem. Given the low estimated exposure beyond the site boundary, the air sampling is adequate for off-site monitoring of potential releases to ensure compliance with the dose limits of 10 CFR Part 20.

Following review of radiological exposure controls, NRC determines the proposed program methodologies are adequate for detecting potential environmental impacts prior to license termination.

6.2.5 Security. Security of radioactive material at the HMI facility is maintained by a fence with a locked front entry gate around the perimeter of the monazite pile. Security for mill buildings is minimal, and other site areas are left unattended for long periods. Equipment theft in mill buildings has been a known concern within buildings, but missing equipment was believed to have been decontaminated after operations shut down in 1990. These concerns should be alleviated by the presence of on-site decommissioning personnel. HMI has committed to establishing a fenced exclusion area for shipping containers and equipment removed from buildings which cannot be released for unrestricted use.

NRC determines this is an adequate level of security to ensure radiological safety will be maintained during decommissioning activities at the site.

6.3 Radiological Accident Analysis

Potential accident scenarios considered include building fire and loading or shipping incidents of radioactive materials. Due to the low potential for fire or explosion in building structures and the limited quantities of material used during transfer operations, accidental releases of radioactive materials in quantities that could affect public health and safety are unlikely. A 24-hour number will be established to provide Radiation Safety Officer notifications in the event emergency response is necessary.

The NRC concludes that HMI has adequately addressed the potential for radiological accidents.

7.0 Environmental Impacts

7.1 Radiological Impacts to the Public and Workers

Potential sources of worker exposure from decommissioning activities include characterization work, decontamination and remediation of buildings and associated structures (piping, foundations), and excavation of soils. Past NRC inspections showed activities resulted in no measurable internal or external dose to workers. These activities were similar to the proposed activities and included equipment and building decontamination, radiological characterizations, and monazite pile maintenance. NRC dose calculation based upon excavation and packaging of 700 m^3 of monazite soil at an average thorium soil concentration of 25 pCi/g (highest sample result obtained during

NRC inspection) project an occupational worker exposure under 10 mRem, primarily due to external exposure. Based on the above, the staff believes that worker exposures will be well within the 10 CFR Part 20 annual worker dose limit of 5000 mRem, and that no adverse impacts to workers will result.

Potential sources of radiological impacts to the public from decommissioning activities at the HMI site are similar to those pertaining to worker exposures (decontamination and excavation dusts), but require transport over greater distances to reach off-site receptors. As a result, lower concentrations and doses are expected for members of the public than for workers. Previous NRC inspections showed that worker exposures during past activities were undetectable. Similarly, the public doses from these activities should be undetectable. The NRC staff has determined that HMI has provided adequate plans to ensure that potential radiological impacts to members of the public from the proposed action will not exceed NRC limits and are unlikely to result in adverse environmental impacts.

7.2 Nonradiological Impacts

There are no planned direct uses of chemicals in the proposed action, only the excavation of soil, and remediation of equipment and buildings. No other operations have a potential to affect the environment. During scoping and characterization surveys, an assessment of each building will be performed to identify the presence of hazardous or mixed wastes. The survey will identify items requiring management of hazardous substances, if found.

The NRC staff has determined that HMI has acceptably addressed the control of potential releases of nonradiological hazardous materials.

8.0 Agencies and Individuals Consulted

NRC transmitted the FSSP to the New Jersey Department of Environmental Protection (NJDEP), US Environmental Protection Agency, Region 2, and Township of Manchester by letters dated February 13, 1998, for review and comment. The response letter of March 18, 1998 from the NJDEP included comments regarding characterization of areas with thorium levels below licensable quantities and extent of soil removal, was forwarded to HMI for evaluation. HMI addressed the State's comments in their letter of November 30, 1998 to NRC providing acceptable responses to the NJDEP questions. No response was received from the EPA or Manchester Township. HMI has committed to coordinate with the NJDEP and comply with applicable State and local regulations during decommissioning activities.

9.0 Finding of No Significant Impact

The Commission has prepared an EA related to the proposed unrestricted release, and removal from license SMB–1541, of 700 m^3 of monazite-rich soil from the Heritage Minerals, Inc., Lakehurst, New Jersey site. On the basis of the EA, the Commission has concluded that this licensing action would not significantly affect the environment and does not warrant the preparation of an environmental impact statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The NRC hereby provides notice that this is a proceeding on a license amendment falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings,'' 10 CFR Part 2. Pursuant to Sec. 2.1205(a), any person whose interest may be affected by this proceeding may file a request for hearing in accordance with Sec. 2.1205 (d). A request for hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** Notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Docketing and Service Branch of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville , MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555. Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in Sec. 2.1205(h),

3. The requestor's area of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with Sec. 2.1205(d).

In accordance with Sec. 2.1205(f), each request for hearing must also be served, by delivering it personally or by mail, to:

1. Heritage Minerals, Inc., Attention: Anthony J. Thompson, Esquire, ShawPittman, 2300 N Street, NW, Washington, DC 20037–1128; and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738 or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555 or at the NRC's Region I offices located at 475 Allendale Road, King of Prussia, PA 19406.

10.0 References

Berger, J.D., ''Manual for Conducting Radiological Surveys in Support of License Termination,'' NUREG/CR–5849, Washington, DC: Nuclear Regulatory Commission. 1992.

Nuclear Regulatory Commission, ''Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use for Termination of Byproduct, Source, and Special Nuclear Material Licenses,'' Policy and Guidance Directive FC 83–23, 1983.

Nuclear Regulatory Commission, ''Final Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC Licensed Nuclear Facilities,'' NUREG–1496, Volume 2, 1997.

Orlando, D., et al., ''NMSS Handbook for Decommissioning Fuel Cycle and Materials Licensees,'' NUREG/BR–0241, Washington, DC: Nuclear Regulatory Commission, 1997.

Dated at King of Prussia, Pennsylvania this 20th Day of August 1999.

For the Nuclear Regulatory Commission.

George Pangburn,

Director, Division of Nuclear Materials Safety.

[FR Doc. 99–22767 Filed 8–31–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41783; File No. SR–AMEX–99–13]

Self-Regulatory Organizations; Order Granting Accelerated Approval to a Proposed Rule Change and Amendment Nos. 1 and 2 and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 by the American Stock Exchange LLC Relating to Specialist Capital Requirements

August 23, 1999.

I. Introduction

On April 2, 1999, the American Stock Exchange LLC (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Amex Rule 950(h) to revise the minimum financial requirement for options specialists. In addition, the Amex proposes to revise Amex Rule 950(h), Commentary .01 to codify the Amex's procedures for calculating the minimum financial requirement for specialists that maintain a book in both equities and options (an ''equity/option book''). On June 11, 1999, July 16, 1999, and August 23, 1999, the Amex filed with the Commission Amendment Nos. 1, 2, and 3 to the proposal.[3]

Notice of the proposed rule change and Amendment Nos. 1 and 2 were published for comment in the **Federal Register** on August 9, 1999.[4] To date, the Commission has received no comment letters regarding the proposal. This order approves the proposal and Amendment Nos. 1, 2, and 3 to the proposal on an accelerated basis.

II. Description of the Proposal

The Amex proposes to amend Amex Rule 950(h) and Commentary .01 to revise the minimum financial requirements for options specialists and to codify in Commentary .01 the Amex's procedures for calculating the minimum financial requirement for a specialist that maintains an equity/options book. Currently, Amex Rule 950(h), which incorporates by reference the specialist financial requirements set forth in Amex Rule 171,[5] requires a registered options specialist to maintain cash or liquid assets equal to the greater of $600,000 or an amount sufficient to assume a position of 60 units (*i.e.*, 60 option contracts representing 6,000 shares) of the highest priced puts and calls for each option in which the specialist is registered.[6] The Amex proposes to revise Amex Rule 950(h) to provide that the minimum financial requirement for an options specialist will be $600,000 plus $25,000 for each option issue in excess of the initial ten issues in which the specialist is registered.

For a specialist that maintains an equity/options book, the minimum $600,000 financial requirement specified in Amex Rule 171 will apply to the entirety of the specialist's business, in both equities and options, provided that the financial requirement for neither the equity allocation nor the options allocation exceeds $600,000.[7] Thus, the minimum financial requirement for a specialist allocated one equity and one option would be $600,000, provided that the financial requirement for neither the equity allocation nor the options allocation exceeded $600,000.[8]

For an equity/option book where the financial requirement for either the equity allocation or the options allocation exceeds $600,000, the specialist's minimum financial requirement will be calculated by combining the requirements of Amex Rules 171 and 950(h). For example, a specialist with three equity allocations and two options allocations, whose financial requirement for the three equity allocations exceeded $600,000, would be required to maintain capital sufficient to assume a position of 60 trading units of each equity allocation plus $50,000 for the two options allocations. A specialist allocated 11 options and one equity security would be required to maintain capital of $625,000 for the 11 options allocations plus any additional amount over $600,000 required to assume a position of 60 trading units of the equity security.[9]

The Amex recently compared its financial requirements for options specialists to the capital requirements of other exchanges. For example, the Amex notes that a Lead Market Maker (''LMM'') on the Pacific Exchange (''PCX'') that performs the function of an Order Book Official (''OBO'') must maintain minimum net capital of $500,000 plus $25,000 for each issue over five issues for which the LMM performs the function of an OBO.[10] An LMM that does not perform the function of an OBO must maintain minimum net capital of $350,000 plus $25,000 for each issue over eight issues that has been allocated to the LMM.[11] The Chicago Board Options Exchange (''CBOE'') currently requires a Designated Primary Market Maker (''DPM'') to maintain cash or liquid assets equal to the greater of $100,000 or an amount sufficient to assume a position of 20 trading units of each security in which the DPM holds an appointment.[12] The Philadelphia Stock Exchange (''PHLX'') requires an options

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 revised the proposal to: (1) Provide an example comparing the financial requirements for options specialists under the rules of the Amex, the Pacific Exchange, and the Chicago Board Options Exchange; and (2) provide examples demonstrating the calculation of the capital requirements for joint equity/options specialists. *See* letter from Scott G. Van Hatten, Legal Counsel, Derivatives and Securities, Amex, to Richard Strasser, Division of Market Regulation (''Division''), Commission, dated June 10, 1999 (''Amendment No. 1''). Amendment No. 2 to the proposal provides two charts setting forth specialist financial requirements as of two dates in May 1999. *See* letter from Scott G. Van Hatten, Legal Counsel, Derivatives and Securities, Amex, to Richard Strasser, Division, Commission, dated July 23, 1999 (''Amendment No. 2''). Amendment No. 3 indicates that the changes to Commentary .01 are a codification of the Amex's current procedures for calculating the minimum financial requirement for a specialist that maintains an equity/options book. *See* letter from Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex, to Richard Strasser, Assistant Director, Division, Commission, dated August 23, 1999. *See also* telephone conversation among Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex, James McNeal, Amex, and Yvonne Fraticelli, Special Counsel, Division, Commission, on August 23, 1999 (''August 23 Conversation'').

In addition, the Amex filed a letter describing financial safeguards applicable to specialists, including the clearing firm guarantee of specialists' transactions (for specialists who are not self-clearing), the Amex's daily review of each specialist's financial condition, and the procedures the Amex follows when the Exchange determines that a specialist is approaching the early warning financial requirement level (120% of the minimum specialist financial requirement). *See* letter from Scott G. Van Hatten, Legal Counsel, Derivatives and Securities, Amex, to Richard Strasser, Assistant Director, Division, Commission, dated June 10, 1999 (''June 10 Letter'').

[4] *See* Securities Exchange Act Release No. 41682 (August 2, 1999), 64 FR 43233.

[5] Amex Rule 171, ''Specialist Financial Requirements,'' requires every registered specialist to maintain a cash or liquid asset position in the amount of $600,000 or an amount sufficient to assume a position of 60 trading units of each security in which the specialist is registered, whichever is greater.

[6] The ''cost to carry'' 60 option contracts is determined pursuant to Rule 15c3–1a(b)(2)(iii)(C) under the Act, which provides that a broker or dealer that is long puts or calls must deduct 50 percent of the market value of the net long put and call positions in the same options series.

[7] *See* proposed Amex rule 950(h), Commentary .01.

[8] *See* Amendment No. 1, *supra* note 3.

[9] *See* Amendment No. 1, *supra* note 4. Thus, in this example, if the cost to assume a position of 60 trading units in the equity allocation is $700,000, then the specialist's minimum financial requirement would be $725,000.

[10] *See* PCX Rule 6.82(h), Commentary .04.

[11] *See* PCX Rule 6.82(c)(11).

specialist exempt from Securities Exchange Act Rule 15c3–1 to maintain a minimum of $75,000 in net liquid assets, and requires an equity and options specialist exempt from Securities Exchange Act Rule 15c3–1 to maintain a minimum of $100,000 in net liquid assets.[13]

The Amex submits that the cost to Amex options specialists to satisfy the Amex's financial requirements has been increasing relative to the financial requirements for competing options specialists or market makers at other exchanges. The Amex maintains that its current financial requirements effectively reduce the number of options issues that may be allocated to an Amex options specialist and provide an incentive for Amex members to consider moving their business operations to exchanges with less restrictive financial requirements. The Exchange believes that the proposed rule change is necessary to address any increase in the number of options issues traded on the Exchange that may occur as a result of competitive marketplace conditions. The Exchange believes that the proposed change in the specialist financial requirement will help to ensure that Amex options specialists continue to maintain adequate capital reserve while remaining competitive with their counterparts at other exchanges.

In addition, the Amex believes that because the financial requirements for specialists do not consider the extent to which a specialist maintains a hedged position in his registered options, the recent increases in premiums for some stock options have caused specialist financial requirements to increase dramatically beyond the level of risk associated with a specialist's market making activities.

The following charts illustrate the fluctuations in the capital requirement for an options specialist as calculated under the Amex's current rule and the impact of premium appreciation on the specialist's minimum financial requirements.[14] Both charts are based on actual capital requirements for options traded on the Amex. The calculations in the first chart are based on premiums for six options as of the close of business on May 6, 1999, while the calculations in the second chart show the premiums for the same options as of the close of business on May 13, 1999.

WEEK 1

Option	Call		Put		Total
	Premium	Requirement	Premium	Requirement	
1	56⅞	$5,687.50×60½	67¼	$6,725.00×60½	$372,375
2	14½	1,450.00×60½	7⅝	762.50×60½	66,375
3	4⅛	412.50×60½	17	1,700×60½	63,375
4	9	900.00×60½	5¼	525.00×60½	42,750
5	15¼	1,525.00×60½	5¼	525.00×60½	61,500
6	58½	5,850.00×60½	33⅝	33,362.50×60½	276,375
Total					882,750

WEEK 2

Option	Call		Put		Total
	Premium	Requirement	Premium	Requirement	
1	75⅜	$7,537.50×60½	55¾	$5,575.00×60½	$393,375
2	13⅞	1,387.50×60½	16⅛	1,612.50×60½	90,000
3	5¼	525.00×60½	22¼	2,225.00×60½	82,500
4	9⅛	912.50×60½	8⅜	837.50×60½	52,500
5	14⅞	1,487.50×60½	8⅜	837.50×60½	69,750
6	61¾	6,175.00×60½	39⅞	3,987.50×60½	304,875
Total					993,000

The Amex notes that, under the proposal, a specialist's financial requirement would not fluctuate with the premiums of the highest priced option series, but would change only when the specialist unit voluntarily changes the number of option issues it trades. Thus, the proposal will allow options specialists to maintain relative control over their level of financial requirements by determining their respective number of options allocations.

The Exchange also notes the presence of various safeguards, including circuit breakers, the Amex's daily review of specialist capital reserves, and the Exchange's early warning signals, which trigger a more intense level of surveillance of Exchange specialists during volatile market situations.[15]

[12] *See* CBOE Rule 8.80, Interpretation and Policy .01. The CBOE has filed a proposal with the Commission that would require a DPM to maintain: (1) Net liquidating equity in its DPM account of not less than $100,000; and (2) net capital sufficient to comply with Securities Exchange Act Rule 15c3–1. *See* Securities Exchange Act Release No. 41325 (April 22, 1999), 64 FR 23691 (May 3, 1999) (notice of filing of File No. SR–CBOE–98–54). The Commission has not acted on the CBOE's proposal.

[13] *See* PHLX Rule 703.

[14] *See* Amendment No. 2, *supra* note 3.

[15] The Amex's June 10 Letter describes additional safeguards relating to specialists' financial requirements. Among other things, the June 10 Letter notes that a specialist unit that is not self-clearing maintains an agreement with a clearing firm that guarantees the specialist's transactions. A specialist that is self-clearing guarantees directly to the National Securities Clearing Corporation and the Options Clearing Corporation all transactions effected by its specialists on the Amex floor. In addition, the June 10 Letter states that the Amex reviews all specialist financial requirements each day and contacts the specialist's principal(s) to request the deposit of additional funds on any day when the specialist approaches the early warning financial requirement level (120% of the minimum specialist financial requirement). If the specialist is unable to deposit additional capital, the Amex obtains a written guarantee from the specialist's clearing firm stating that the clearing firm will guarantee the specialist's transactions. The process of obtaining a written guarantee serves to notify the clearing firm of the specialist's current financial condition. Finally, the Amex notes that the

Continued

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with the Section 6(b)(5) [16] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

The Amex proposes to amend its rules to revise the minimum financial requirement for options specialists and to codify the Exchange's procedures for calculating the minimum financial requirement for specialists that maintain an equity/options book. Under the proposal, the minimum financial requirement for an options specialist will be $600,000 plus $25,000 for each option issue in excess of the initial ten issues in which the specialist is registered. For a specialist with an equity/options book, the minimum $600,000 financial requirement specified in Amex Rule 171 will apply to the entirety of the specialist's business, in both equities and options, provided that the financial requirement for neither the equity allocation nor the options allocation exceeds $600,000. If either allocation exceeds $600,000, the specialist's minimum financial requirement of Amex Rules 171 and 950(h). Thus, as described more fully above, an equity/options specialist with a financial requirement over $600,000 for his equity allocation will be subject to a capital requirement of $25,000 for each options allocation. Similarly, an equity/options specialist with a financial requirement of $625,000 for his options allocation and $700,000 for his equity allocation will have a financial requirement of $725,00.[17] The proposal will lower the minimum financial requirement for most Amex options specialists.[18]

The Commission finds that the proposed capital requirements are designed to assure that Amex options specialists and specialists maintaining an equity/options book are capable of making deep, liquid, and competitive markets. Although the proposal will reduce the minimum financial requirement for most Amex options specialists, the Commission finds, based on the representatives of the Amex, that there are sufficient safeguards (in addition to the proposed minimum capital requirement) to assure that the Amex's options specialists are adequately capitalized. In this regard, the Amex in its June 10 Letter notes, first, that the transactions of a specialist unit that is not self-clearing are guaranteed by the specialist's clearing firm. Second, the Amex states that it reviews all specialist financial requirements each day and, on any day when it determines that a specialist is close to the early warning financial requirement level (120% of the minimum specialist financial requirement), the Amex contacts the specialist's principal(s) and requests the deposit of additional cash or liquid assets. If the specialist fails to deposit additional capital, the Amex contacts the specialist's clearing firm and obtains a written guarantee from the clearing firm that it will guarantee the specialist's transactions; this process ensures that the clearing firm is aware of the specialist's current financial condition and that the clearing firm's guarantee is based upon current market conditions. Third, the Amex believes that the proposed financial requirements will help to ensure that Amex specialists are able to make deep, liquid, and competitive markets, while competing vigorously with specialists on other options exchanges in multiply-traded issues.[19]

The Commission finds that the proposed financial requirements are comparable to the financial requirements at other options exchanges.[20] Accordingly, the Commission believes that the proposal will help Amex options specialists compete effectively with specialists at other exchanges in multiply-traded issues. Increased competition, in turn, should benefit investors by producing a more efficient marketplace.

The Amex also notes that under its current rule the financial requirement for options specialists fluctuates with the options premiums. The proposed capital requirement for options specialists will be based on the number of issues a specialist trades rather than on the fluctuating prices of the options premiums. This method for determining the minimum financial requirement has the advantages of simplifying the specialist's capital calculation and avoiding a significant increase in the capital requirement that occurs under the Amex's current rule if the price of the underlying stock rises dramatically.

Finally, the Commission finds that it is reasonable for the Amex to codify in Amex Rule 950(h), Commentary .01, its existing procedures for calculating the minimum financial requirement for specialists that maintain an equity/options book.[21] The Commission believes that codifying these provisions will clarify the Amex's procedures and help to ensure compliance with the Amex's financial requirements.

The Commission finds good cause for approving the proposed rule change and Amendment Nos. 1, 2, and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission finds that accelerated approval of the proposal will help Amex options specialists to compete effectively with specialists and market makers on other options exchanges in multiply-traded issues. The Commission finds that Amendment Nos. 1 and 2 clarify the Amex's proposal by providing examples and additional explanations of the operation of the proposed rule. Amendment No. 3 clarifies the Amex's proposal by indicating that the provisions of the proposal relating to the minimum financial requirement for a specialist that maintains an equity/options book codify the Exchange's current procedures for calculating the minimum financial requirement for an equity/options book. Accordingly, the Commission believes that granting accelerated approval of the proposal and Amendment Nos. 1, 2, and 3 is appropriate and consistent with Sections 6(b)(5) and 19(b)(2) of the Act.[22]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

Exchange may reallocate the specialist's allocation to another specialist unit if the specialist fails to satisfy the Amex's financial requirement. *See* June 10 Letter, *supra* note 3.

[16] 15 U.S.C. 78f(b)(5).

[17] *See* Amendment No. 1, *supra* note 3.

[18] *See* August 23 Conversation, *supra* note 3.

[19] *See* June 10 Letter, *supra* note 3.

[20] For example, as noted above, an LMM on the PCX that performs the function of an OBO must maintain minimum net capital of $500,000 plus $25,000 for each issue over five issues for which the LMM performs the function of an OBO. An LMM that does not perform the function of an OBO must maintain minimum net capital of $350,000 plus $25,000 for each issue over eight issues that has been allocated to the LMM. The CBOE currently requires a DPM to maintain cash or liquid assets equal to the greater of $100,000 or an amount sufficient to assume a position of 20 trading units of each security in which the DPM holds an appointment. The PHLX requires an option specialist exempt from Securities Exchange Act Rule 15c3–1 to maintain a minimum of $75,000 in net liquid assets, and requires an equity and options specialist exempt from Securities Exchange Act Rule 15c3–1 to maintain a minimum of $100,000 in net liquid assets.

[21] *See* Amendment No. 3 and August 23 Conversation, *supra* note 3.

[22] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–99–13 and should be submitted by September 22, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–Amex–99–13), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22697 Filed 8–31–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41782; File No. SR–CBOE–99–17]

Self-Regulatory Organizations; Notice of Filing of Amendment #2 and Order Granting Partial Accelerated Approval to a Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Operation of the Retail Automatic Execution System

August 23, 1999.

I. Introduction

On April 16, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending the CBOE's rules governing the operation of its Retail Automatic Execution System (''RAES''). On May 21, 1999, the CBOE filed with the Commission Amendment No. 1 to the proposal.[3] Today, the CBOE filed Amendment No. 2 to the proposal.[4]

a. The Initial Proposal

The proposal as amended by Amendment No. 1 (''Initial Proposal'') seeks to increase the maximum order size of certain RAES-eligible options from 20 to 50 contracts. It also contains provisions relating to the authority of the CBOE Floor Procedure Committees (''FPCs'') to change RAES order assignment procedures (including the authority to implement a procedure called ''Variable RAES,'' described below) and improve the execution price of RAES orders in multiple listed options to match a better price on another market. Notice of the Initial Proposal was published in the **Federal Register** on June 17, 1999.[5] The Commission received no comments on the proposal. The proposal is pending with the Commission.

b. The Current Amendment

Amendment No. 2 (''Current Amendment'' or ''Proposed Rule Change'') will permit the CBOE to immediately implement a new order assignment procedure called ''Variable RAES'' for CBOE options transactions in five stocks that are dually listed on both the Philadelphia Stock Exchange (''Phlx'') and the CBOE. Those stocks are Dell Computer Corporation (''DLQ''), International Business Machines (''IBM''), Johnson & Johnson (''NJN''), Coca-Cola (''KO''), and Ford Motor Company (''F''). The Current Amendment was filed in tandem with a related rule proposal, SR–CBOE–99–47, which increases the maximum RAES order size from 20 to 50 contracts in options on those five stocks only. SR–CBOE–99–47 becomes effective today. The CBOE seeks immediate Commission approval of the Current Amendment so that Variable RAES can be used today, when the new order size maximum on the five dually traded options goes into effect.

II. Description of the Proposal

Under former procedures, RAES orders were randomly assigned to market makers, and each market maker had to buy or sell the entire order assigned to him or her. By contrast, Variable RAES as implemented in the Current Amendment will enable market maker to designate a maximum number of contracts he or she is willing to buy or sell when a RAES order for any of the five dually listed options is assigned to that market maker.[6] The CBOE represents that, ''[w]ith a higher size limit for RAES orders, this flexibility to choose their own maximum participation in any one RAES trade will encourage more market makers to participate in RAES, since it will give them greater control over the risks they take by participating in RAES.''[7]

III. Discussion

We believe that accelerated approval of Variable RAES for the five dually listed options is appropriate for three reasons. First, it allows RAES market makers to choose the level of risk they are comfortable with. This is important because the CBOE today is increasing the maximum size of orders eligible for RAES from 20 to 50 contracts in those five dually listed options, thus increasing the potential exposure of RAES market makers to risk in those options. Second, the proposal does not otherwise change the way RAES operates from a customer perspective. Third, the Commission previously published for comment the Initial Proposal, which included a much more expansive provision permitting implementation of Variable RAES for all options classes, not just the five classes at issue here. We received no comments on the Initial Proposal, and we believe the Current Amendment does not raise any new issues.

We are not now approving the textual changes to the RAES rules proposed by the CBOE in its Initial Proposal. Rather, we are continuing to work with the CBOE to address outstanding issues raised by those rules relating to the

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[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Timothy Thompson, Director, Regulatory Affairs, CBOE, to Gordon Fuller, Special Counsel, Division of Market Regulation, SEC, dated May 20, 1999 (''Amendment No. 1'').

[4] *See* letter from Christopher R. Hill, Attorney, CBOE, to Michael Walinskas, Associate Director, Division of Market Regulation, SEC, dated August 23, 1999 (''Hill Letter'').

[5] *See* Securities Exchange Act Release No. 41501 (June 9, 1999), 64 FR 32568.

[6] The maximum order size selected by the market maker must be equal to or greater than a minimum order size set by the FPC. The FPC will initially set the minimum at 20 contracts per order for each of the five options covered by the Current Amendment, and may adjust that level up or down in the future for any of these options. If the FPC decides to increase the 20-contract minimum in the future, it will take into account the ability of market makers to accept the heightened risk associated with that increase. Telephone conversation between Tim Thompson, Director, Regulatory Affairs, CBOE, and Christopher R. Hill, Attorney, CBOE, and Gordon Fuller, Special Counsel, Division of Market Regulation, SEC (August 23, 1999).

[7] *See* Hill Letter, *supra* note 4, at 1.

manner in which CBOE will be able to employ Variable RAES. Such issues relate to the degree of authority delegated to the appropriate FPCs regarding Variable RAES, and to internal governance matters. At a later time, when we have resolved these outstanding issues, we will also consider the specific changes to the text of the rules proposed by the CBOE in its Initial Proposal.

Accordingly, after careful review, the Commission finds that the Current Amendment is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the Current Amendment is consistent with Section 6(b)(5), in that it is designed ''to promote just and equitable principles of trade * * * to remove impediments to and perfect the mechanism of a free and open market * * * and, in general, to protect investors and the public interest.'' [8] Moreover, the Commission finds good cause for approving the Current Amendment prior to the 30th day after the date the Amendment is published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[9] Specifically, the Commission finds that Variable RAES will appropriately permit RAES market makers to limit their risk to compensate for increased exposure to the larger RAES order sizes that go into effect today.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the Current Amendment, including whether the Current Amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–17 and should be submitted by September 22, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the Current Amendment to SR–CBOE–99–17, be and hereby is approved on an accelerated basis.[11]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

[FR Doc. 99–22696 Filed 8–31–99; 8:45 am]

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[8] 15 U.S.C. 78s(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 15 U.S.C. 78s(b)(2).

[11] In approving the Current Amendment, the Commission has considered its impact on efficiency, competition, and capital formation, 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41786; File No. SR–DTC–99–17]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Accelerated Approval of a Proposed Rule Change Relating to Arrangements To integrate The Depository Trust Company and the National Securities Clearing Corporation

August 24, 1999.

On July 6, 1999, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–DTC–99–17) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on August 11, 1999.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change involves arrangements to integrate DTC and the National Securities Clearing Corporation (''NSCC''). Under the rule change, DTC and NSCC will form a New York corporation (''Holding Company'') that will own directly all of the outstanding stock of NSCC and will own indirectly through a Delaware subsidiary of the Holding Company all of the outstanding stock of DTC.

The Holding Company will issue two classes of stock: common and preferred. The Holding Company will conduct two exchange offers in which (1) current DTC stockholders will have the opportunity to exchange their DTC shares for Holding Company common stock on a one-for-one basis and (2) the New York Stock Exchange (''NYSE'') and the National Association of Securities Dealers, Inc. (''NASD''), the two current stockholders of NSCC, will be offered shares of Holding Company preferred stock on a one-for-one basis in exchange for their NSCC shares.

In connection with the exchange offer for shares of DTC stock, the current DTC Stockholders Agreement has been amended to provide that if a specified supermajority of DTC stockholders tender their shares of DTC stock for shares of Holding Company common stock: (1) any DTC stockholders that fail to tender their shares of DTC stock will cease to be qualified holders of DTC stock; (2) their shares of DTC stock will automatically be transferred to NSCC; (3) NSCC will tender such shares of DTC stock to the Holding Company in exchange for an equivalent number of shares of Holding Company common stock; and (4) the non-tendering DTC stockholders will be paid DTC book value for their shares of DTC stock as and when NSCC, in accordance with procedures set forth in the Holding Company Shareholders Agreement, sells or transfers its shares of Holding Company common stock to other participants or members of DTC and NSCC.[3]

The Holding Company's Articles of Incorporation, By-Laws, and Shareholders Agreement (''Basic Documents'')[4] contain provisions designed to preserve the rights that the stockholders of DTC and NSCC currently have and in particular to satisfy the fair representation requirement of Section 17A(b)(3)(C) of the Act.[5] Specifically, the Basic Documents provide for the following:

- As owners of Holding Company preferred stock, the NYSE and the NASD each will have the right to put one person on the Board of Directors of the Holding Company. All other directors will be elected annually by the owners of holding Company common stock. The Holding Company will elect as the Directors of DTC and NSCC the

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 41657 (July 27, 1999), 64 FR 43795.

[3] DTC has informed the Commission that the procedures to be used by NSCC to sell or transfer Holding Company common stock are in all material respects the same as the procedures set forth in DTC's Stockholders Agreement applicable to the sale by a stockholder of DTC shares.

[4] DTC included the Basic Documents as exhibits to its filing, which is available for inspection and copying in the Commission's public reference room and through DTC.

[5] 15 U.S.C. 78q–1(b)(3)(C).

persons that the stockholders of the Holding Company elect as the directors of the Holding Company.

- The rights to purchase Holding Company common stock will be reallocated to the users of DTC and NSCC based upon the users' usage of the clearing agencies' services and facilities. Under the Basic Documents, these rights will be reallocated initially in 2000 and again in 2001. Thereafter, depending upon whether there are significant changes in entitlements and stock purchases, the Board of the Holding Company will be permitted to schedule reallocations every other year or every third year rather than annually.
- The owners of Holding Company common stock will be able to exercise cumulative voting in the election of Holding Company directors.

Each year the holding Company's Board of Directors will appoint a nominating committee that may include both members and non-members of the Board. After soliciting suggestions from all users of the clearing agencies of possible nominees to fill vacancies on the Board, the nominating committee will recommend a slate of nominees to the full Board. The Board may make changes in that slate before submitting nominations to the holders of Holding Company common stock for election. The election ballot included in the proxy materials will provide an opportunity for stockholders to vote for a person not listed as a nominee. Because the Basic Documents provide for cumulative voting, it will be possible one or more owners of Holding Company common stock to arrange to elect a person not on the slate nominated for election by the Board.

DTC and NSCC will continue to operate as they do currently, and each will offer its own services to its own participants and members pursuant to separate legal arrangements and separate risk management procedures. DTC has informed the Commission that the Holding Company will not engage in any clearing agency activities but that it will provide certain support functions, including human resources, finance, audit, general administration, corporate communications, and legal, which support functions will be centralized in the Holding Company, to DTC and NSCC pursuant to service contracts.

II. Discussion

Section 17A(b)(3)(C) of the Act[6] requires that the rules of a clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. The Commission believes that the proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(C) because it should provide DTC's participants with a reasonable opportunity to acquire common stock in the Holding Company in proportion to their use of DTC and should provide DTC's participants through their holding of Holding Company stock with adequate and fair representation in the selection of DTC's directors and in the administration of DTC's affairs.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice will allow DTC to proceed with the exchange offer to its shareholders in which the shareholders may exchange their shares in DTC for common stock in the Holding Company.

III. Conclusion

On the basis of the foregoing, the Commission finds that DTC's proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–99–17) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22692 Filed 8–31–99; 8:45 am]

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[6] 15 U.S.C. 78q–1(b)(3)(C).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41787; File No. SR–NYSE–99–31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending Exchange Rules 902, 903 and 906

August 25, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposed to amend NYSE Rules 902, 903 and 906 to permit coupled orders to be submitted after the official closing of the 9:30 a.m. to 4:00 p.m. trading session until 5:00 p.m. (the period after the 4:00 p.m. close until 5:00 p.m. hereafter referred to as ''Crossing Session 1'') where both sides represent member or member organization interest, in circumstances in which a specialist has included another member's or member organization's interest in offsetting the imbalance when setting a closing price. The text of the proposed rule change is available at the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1991, the Exchange established its ''Off-Hours Trading Facility.'' In connection with its implementation, the Exchange adopted the ''900'' series of rules to govern trading, order eligibility, order entry and record keeping requirements.

At 4:00 p.m. each day, the Exchange completes its normal procedure for the close of trading of the 9:30 a.m.–4:00 p.m. trading session. After 4:00 p.m., a common message switch broadcast message is published announcing the commencement of Crossing Session 1, which runs until 5:00 p.m.

During Crossing Session 1, the Off-Hours Trading Facility permits members and member organizations to enter orders to be executed at the NYSE closing price, that is, the price established by the last regular way sale in a security at the official closing of the 9:30 a.m. to 4:00 p.m. trading session. Orders may be entered for any Exchange listed issue, other than a security that is subject to a trading halt at the close of the regular trading session (including a Rule 80B trading halt) or is halted after 4:00 p.m.

The Exchange proposed to modify certain rules pertaining to Crossing Section 1 in an effort to reduce volatility and price dislocations at the 4:00 p.m. close by enabling the specialist to reflect legitimate market interest that was willing to participate in the close, but could not enter a timely order.

In circumstances in which a stock has an imbalance of market-on-close or limit-on-close orders, or when the closing price will elect a significant volume of stop orders, there may be little time to attract offsetting orders. A member, member organization or a customer may be willing to offset the imbalance, but be unable to enter an order before 4:00 p.m. The specialist may then have to acquire a substantial position or halt trading.

Under NYSE Rule 902, coupled orders to buy and sell the same amount of the same security may be entered into Crossing Session 1. However, such coupled orders may not be entered if they are both for an account of a member or member organization, or for an account in which an ''associated person'' of a member or member organization has an interest.

Therefore, while a specialist member organization may enter an order coupled with a contra-side order from a non-member in Crossing Section 1, it may not enter an order coupled with an order for a member's or member organization's account.

The Exchange proposes to amend NYSE Rule 902 to permit coupled orders to be submitted to Crossing Session 1 where both sides represent member or member organization interest, in circumstances in which a specialist has included another member's or member organization's interest in offsetting the imbalance when setting a closing price. Thus, the specialist will increase his or her participation at the close in anticipation of trading with a member or member organization in Crossing Session 1 and the closing price will reflect less of an imbalance.

Under NYSE Rule 903, orders entered in Crossing Session 1, including coupled orders, are executed at the 5:00 p.m. close of the session. Under NYSE Rule 906, if the Exchange determines that material news is disclosed between 4:00 p.m. and 5:00 p.m., such as about a corporate development, it will cancel orders received in Crossing Session 1 and will preclude the entry of any subsequent orders. However, in the circumstances, outlined above, it is the Exchange's view that a good faith negotiation tied to establishing the closing price should not be affected by a subsequent event which ''halts'' trading.

Therefore, the Exchange proposes to amend NYSE Rules 903 and 906 to permit trades for the account of a specialist and a member, member organization or a non-member to be executed immediately when entered into Crossing Session 1 and not at 5:00 p.m. regardless of whether the Exchange has determined that all other Crossing Session 1 orders be canceled and precluded from entry. In addition, the specialist will be required to obtain Floor Official approval for the entry of his or her order into Crossing Session 1 if such order is not to be at the risk of the market, *i.e.*, it will be executed immediately and will not be precluded from entry because of a trading ''halt.'' This requirement will help to insure that these orders, which are intended to offset the specialist's participation at the close, have been reflected when the closing price was established. Other coupled orders would continue to be executed at 5:00 p.m., subject to the stock not being withdrawn from Crossing Session 1. The Exchange believes that retaining this provision for other orders is appropriate for the protection of investors who may not be aware of the corporate development.

Total executed volume for coupled orders which are executed either immediately upon entry or at 5:00 p.m. would be reported to the tape as a single print, and will continue to be reported as ''sold.''

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[3] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

[3] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR–NYSE–99–31 and should be submitted by September 22, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22693 Filed 8–31–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41789; File No. SR–Phlx–98–43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 by the Philadelphia Stock Exchange, Inc. Adopting Proposed Rule 134 Regarding Stop-Order Bans and Amendment Rule 229 To Require the Use of Account Identifiers for PACE Users

August 25, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 18, 1998, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 9, 1998, February 2, 1999, and July 14, 1999, respectively, the Exchange filed Amendment Nos. 1,[3] 2,[4] and 3[5] to the proposal with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, including Amendments Nos. 1, 2, and 3, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to adopt Rule 134 to provide for stop order and stop limit order[6] bans whenever such orders are banned on the primary market. In addition, the Exchange proposes to amend Phlx Rule 229 to require account identifiers for orders submitted through the Phlx Automated Communication and Execution (''PACE'')[7] System.

The text of the proposed rule change is available at the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has previously adopted circuit breaker rules, paralleling the rules of other exchanges.[8] At this time, the Exchange proposes, like other exchanges, to prohibit the entry of stop and stop limit orders during times of market stress.[9]

Proposed Rule 134 will establish a procedure prohibiting the entry of stop orders and stop limit orders in the following situations: (1) whenever the primary market for a stock admitted to dealings on the Exchange institutes a stop and stop limit order ban, the Exchange will also ban such orders in the stock until such time as the ban in the primary market is lifted; and (2) whenever the NYSE institutes a stop and stop limit order ban pursuant to NYSE Rule 80A, the Exchange will also ban stop and stop limit orders for the remainder of the day, except that a member or member organization may enter a stop or stop limit order of 2,099 shares or less for the account of an individual investor pursuant to instructions received directly from the individual investor.[10]

The first instance where a stop order ban can occur is when the primary market for the security issues a stop order ban. Following notice from the Consolidated Tape, the Exchange will announce to the floor and to PACE users that a stop order ban is in effect in the particular issue. The entry of stop and stop limit orders on the Phlx would be prohibited until the ban in the primary market is lifted and that information is disseminated on the Consolidated Tape. However, unlike the broad market ban described below, any stop or stop limit orders residing on the specialist's book when a ban goes into effect for an individual stock may[11] be canceled by the Exchange with the approval of two Floor Officials and a market regulation officer.[12] This provision is consistent with the rules of the Boston Stock Exchange.[13]

The Exchange believes that it is appropriate to ban stop orders and stop limit orders when the primary market institutes a ban because, in a volatile market, stop orders can accumulate at various prices and, if triggered, the stop orders may increase price fluctuations in a particular stock. Because other exchanges have adopted stop order ban

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[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Nandita Yagnik, Counsel, Phlx, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation (''Division''), Commission, dated December 8, 1998 (''Amendment No. 1''). In Amendment No. 1, the Exchange corrects the reference to the identifier ''P'' to refer to Principal orders not non-agency orders.

[4] *See* letter from Nandita Yagnik, Counsel, Phlx, to Michael Walinskas, Deputy Associate Director, Division, Commission, dated February 1, 1999 (''Amendment No. 2''). In Amendment No. 2, the Exchange proposes to adopt Rule 134, Commentary .01, *Stop order definition.* In addition, the Exchange has amended proposed Rule 134(c)(iii) to state that any stop orders or stop limit orders on the book *may* be canceled by the Exchange. The Exchange represents that, by changing ''will'' to ''may,'' the Exchange retains flexibility to determine whether stop orders on the book should be canceled at the time the primary market institutes a stop order ban.

[5] *See* letter from Nandita Yagnik, Counsel, Phlx, to Michael Walinskas, Associate Director, Division, Commission, dated July 13, 1999 (''Amendment No. 3''). In Amendment No. 3, the Exchange clarified that outstanding stop and stop limit orders cannot be cancelled without the approval of two floor officials and a market regulation officer. The Exchange also amended Rule 134(c)(iii) to codify factors to be considered in determining whether stop and stop limit orders on the book would be cancelled in the event that the Exchange institutes a stop order ban in an individual stock. These factors include: (1) If the primary market cancels stop orders residing on their book; or (2) other unusual conditions or circumstances.

[6] A stop order to buy (sell) becomes a market order when a transaction in the security occurs at or above (below) the stop price after the order is represented at the specialist post. A stop limit order to buy (sell) becomes a limit order executable at the limit price or at a better price, if obtainable, when a transaction in the security occurs at or above (below) the stop price after the order is presented at the specialist post.

[7] PACE is an electronic order entry, delivery, and execution system which operates on the equity floor pursuant to Phlx Rule 229.

[8] *See* Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (Order approving SR–PHLX–98–15).

[9] *See* Boston Stock Exchange Rules Chapter II, Section 35(b); and Chicago Stock Exchange Chapter IX, Rule 10B, .01(ii).

[10] The Commission has approved a proposed rule change (SR–NYSE–98–45) to eliminate the stop and stop limit order ban under Rule 80A. *See* Securities Exchange Act Release No. 41041 (Feb. 11, 1999), 64 FR 8424 (Feb. 19, 1999).

[11] *See* Amendment No. 2, *supra* note 4. The Commission notes that, pursuant to Boston Stock Exchange Rules Chapter II, Section 35(b), any stop or stop limit orders residing on the specialist's book when a ban goes into effect for an individual stock *will* be canceled by the Exchange.

[12] *See* Amendment No. 2, *supra* note 5.

[13] *See* Boston Stock Exchange Rules Chapter II, Section 35(b).

procedures, Phlx is concerned that a migration of stop and stop limit orders to the Phlx could occur, thus causing a burden on Phlx specialists.

The second situation automatically arises, pursuant to NYSE Rule 80A, when there is a 12 point decline in the Standard and Poor's 500[14] futures contract traded on the Chicago Mercantile Exchange. Once implemented, the ban remains in effect until the end of the trading day. Any stop and stop limit orders on the specialist's book at the time the ban goes into effect remain eligible for execution.

The proposed rule creates an exception for the entry of a stop or stop limit order of 2,099 shares or less for the account of an individual investor pursuant to instructions received from the individual investor. The Exchange defines the account of an individual investor as an account covered by Section 11(a)(1)(E) of the Act.[15]

The Exchange also proposes requiring PACE users to attach account identifiers on orders submitted through PACE. Among other things, this will allow the system to distinguish orders for the account of an individual investor from other orders. Specifically, Rule 229, Commentary .20 will require that all orders sent through PACE shall include the appropriate account designator. The following are acceptable account types: ''P''—principal order;[16] ''A''—agency; ''I''—individual investor; ''D''—program trade, non-index arbitrage for member/member organization; ''J''—program trade, index arbitrage for individual customers; ''K''—program trade, non-index arbitrage for individual customer; ''U''—program trade, index arbitrage for other agency; and ''Y''—program trade, non-index arbitrage for other agency. Orders for less than 2,099 shares with the account identifier of ''I'' would still be able to be entered during the duration of the ban. Other orders will be automatically rejected by the PACE System.

The Exchange believes that the account identifiers proposed in the filing will enhance efficiency and accuracy of audit trail information and will facilitate surveillance investigations by readily identifying a member's proprietary trades. More accurate audit trail information should also increase the effectiveness of the Exchange's surveillance procedures.[17] Member firms will be given notice following the approval of the proposal to enable them to comply with new order identification requirements.

The purpose of the proposed rule is to reduce selling pressure by preventing market professionals from entering orders during a market sell-off as well as enhance market coordination of the circuit breaker rules; in turn, the Phlx believes that the proposal should help reduce market volatility. In addition, proposed Phlx Rule 134 should prevent the migration of stop orders from the primary markets to the Phlx in the case of extraordinary market volatility, which should prevent the transfer of market volatility to the Phlx. The exception, which allows individual investors to enter stop orders or stop limit orders for 2,099 shares or less, provides those investors who do not have the ability to continuously monitor market conditions some measure of downside protection in a rapidly moving market. Thus, the Exchange believes that the proposal represents a reasonable effort and coordinated means to address potential strain on the market that may develop should the Exchange become inundated with such orders.

2. Statutory Basis

For the reasons stated above, the Exchange believes that proposed Phlx Rule 134 and the amendment to Phlx Rule 229 are consistent with Section 6(b)(5) of the Act[18] in that they are designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market, by facilitating the maintenance of an orderly market and reducing market volatility.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriated and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–98–43 and should be submitted by September 22, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22694 Filed 8–31–99; 8:45 am]

BILLING CODE 8010–01–M

[14] Standard & Poor's 500 Stock Index is a service mark of Standard & Poors Corporation.

[15] An account covered by Section 11(a)(1)(E) of the Act is an ''account for a natural person, the estate of a natural person, or a trust created by a natural person for himself or another natural person.'' 15 U.S.C. 78k(a)(1)(E).

[16] *See* Amendment No. 1, *supra* note 3.

[17] Telephone conversation between Nandita Yagnik, Counsel, Phlx, and David Sieradzki, Special Counsel, Division, Commission, on July 21, 1999.

[18] 15 U.S.C. 78f(b)(5).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41780; File No. SR–Phlx–99–20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Amendments to Schedule of Dues, Fees, and Charges

August 23, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 hereunder,[2] notice is hereby given that on June 23, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On June 28, June 30, and July 22, 1999, the Exchange submitted Amendment Nos. 1,[3] 2 [4] and 3,[5] respectively, to the proposed rule change.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange clarified that the proposed new foreign currency options ''participation fee'' would be effective as of July 1, 1999, but that only those foreign options participants holding legal title as of July 30, 1999 would be responsible for paying the fee. *See* Letter and attached amendment from Murray Ross, Vice President and Secretary, Phlx, to Michael Walinskas, Associate Director, Division of Market Regulation (''Division''), Commission, dated June 25, 1999 (''Amendment No. 1'').

[4] In Amendment No. 2, the Exchange replaced the text of the original proposed rule change. The amendment: (a) purported to create a technology fee exemption for foreign currency options participants who *do not* hold Phlx membership; (b) incorporated the change from Amendment No. 1 regarding the effective date of the participation fee; and (c) made typographical changes to the proposed fee schedule. *See* Letter and attached amendment from Murray Ross, Phlx, to Michael Walinskas, Division, Commission, dated June 29, 1999 (''Amendment No. 2'').

[5] In Amendment No. 3, the Exchange stated that the technology fee exemption was for foreign currency options participants who *also* hold Phlx memberships. The Exchange also stated that the foreign currency options participation fee was intended to address costs associated with the foreign currency options program including occupancy, Securities Industry Automation Corporation night processing, market data feeds, staffing and communications. Phlx also clarified that the proposed fee would not address Year 2000-related events. *See* Letter and attached amendment from Nandita Yagnick, Attorney, Phlx, to Michael Walinskas, Division, Commission, dated July 21, 1999 (''Amendment No. 3'').

[6] Because of the substantive nature of the amendments, the Commission deems the proposal to be filed on July 22, 1999, the date the last amendment was filed.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees, and charges to require all foreign currency options participants, as defined by Phlx By-Law Article I, Section (i), to pay a new annual participation fee of $2,000, billed semi-annually, to be effective July 1, 1999, and payable July 30, 1999. The Exchange also seeks to clarify that it will bill its existing technology fee semi-annually (not monthly), and that the technology fee is not applicable to foreign currency option participants who hold title to a Phlx membership. The Exchange also proposes to make typographical changes to its fee schedule. The text of the proposed changes to the Phlx fee schedule may be examined in the places specified in Item IV below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

1. Purpose

The proposed rule change amends the Phlx's fee schedule to impose a new foreign currency option participation fee of $2,000 annually, to be billed semi-annually, effective July 1, 1999, to all foreign currency options participants. Only those foreign currency options participants who hold legal title as of July 30, 1999 are responsible for payment of the participation fee. Thus, although the fee is effective July 1, 1999, it only becomes payable by participants as of July 30, 1999.

The Exchange is proposing to implement the foreign currency options participation fee to help defray operating expenses of the foreign currency options program. The proposed participation fee will address costs associated with the foreign currency options program, including occupancy, Securities Industry Automation Corporation (SIAC) night processing, market data feeds, staffing and communications.[7]

The Exchange also proposes to amend its fee schedule to reflect that it will bill its existing technology fee in semi-annual increments of $600 (instead of monthly increments of $100). The Exchange further proposes that it will not apply the technology fee to foreign currency options participants who are also Phlx members to avoid double billing.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act [8] in general, and furthers the objectives of Section 6(b)(4) [9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Phlx believes that the foreign currency option participation fee is reasonable and equitable because, in addition to covering costs, it is comparable to other Phlx fees and charges such as the technology fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee or change imposed by the Exchange and, therefore, has become effective upon filing pursuant to Rule 19(b)(3)(A) of the Act [10] and rule 19b–4(f)(2) thereunder.[11] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise

[7] The proposed participation fee is in addition to the existing membership dues that Phlx imposes on its members, and also separate from the $2,000 user fees owed by foreign currency options participants who are not also members of the Phlx. Foreign currency options participants who also hold Phlx memberships are exempted from the foreign currency user fee.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–99–20 and should be submitted by September 22, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22695 Filed 8–31–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3207]

State of Nebraska

As a result of the President's major disaster declaration on August 20, 1999, I find that Burt, Douglas, and Washington Counties in the State of Nebraska constitute a disaster area due to damages caused by severe storms and flooding that occurred on August 6–9, 1999. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 18, 1999, and for loans for economic injury until the close of business on May 22, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Cuming, Dodge, Sarpy, Saunders, and Thurston Counties in Nebraska, and Harrison, Monona, and Pottawattamie Counties in Iowa.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	7.250
Homeowners Without Credit Available Elsewhere	3.625
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.000
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 320711. For economic injury the numbers are 9D8400 for Nebraska and 9D8500 for Iowa.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 24, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–22740 Filed 8–31–99; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Emergency Consideration Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is requesting emergency consideration from OMB by September 10, 1999 of the information collection listed below.

Partnership Questionnaire—0960–0025. Form SSA–7104 is used to establish several aspects of eligibility for benefits, including accuracy of reported partnership earnings, the veracity of a retirement, and lag earnings where they are needed for insured status. The respondents are applicants for old age and disability benefits.

Number of Respondents: 12,350.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 6,175 hours.

You can obtain a copy of the collection instrument and/or OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

(SSA Address), Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

Dated: August 26, 1999.

Frederick W. Brickenkamp,

Reports Clearance Officer.

[FR Doc. 99–22734 Filed 8–31–99; 8:45 am]

BILLING CODE 4190–29–U

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegation of Authority

This statement amends part S of the Statement of the Organization, Functions and Delegations of Authority, which covers the Social Security Administration (SSA). Chapter S2 covers the Deputy Commissioner, Operations. Notice is hereby given that Subchapter S2L, the Office of Automation Support, is being amended to reflect a revised mission statement and the establishment of the Electronic Service Delivery Process Team. The new material and changes are as follows:

Section S2.20 *The Office of the Deputy Commissioner, Operations*—Functions):

H. The Office of Automation Support (OAS) (S2L)

Amend the second sentence to read: ''It determines and defines DCO requirements for software, hardware and electronic service delivery support''.

Amend the fifth sentence to read: ''OAS develops, implements and administers evaluative tools for hardware purchases, software development and electronic service delivery''.

Section S2L.00 *The Office of Automation Support*—(Mission):

Amend third sentence to read: ''In concert with the Deputy Commissioner for Systems (DCS) and other Central Office components, it determines and defines DCO requirements for software, hardware and electronic service delivery support''. Section S2L.10 *The Office of Automation Support*—(Organization):

Amend as follows:

[12] 17 CFR 200.30–3(a)(12).

A. The Associate Commissioner, Office of Automation Support (S2L).

B. The Deputy Associate Commissioner, Office of Automation Support (S2L).

C. The Immediate Office of the Associate Commissioner, Office of Automation Support (S2L).

D. The Software Implementation Process Team (S2LA).

E. The Technology Support Process Team (S2LB).

Establish:

F. The Electronic Service Delivery Process Team (S2LC). Section S2L.20 *The Office of Automation Support*—(Functions):

Amend to read as follows:

A. The Associate Commissioner, Office of Automation Support (S2L).

B. The Deputy Associate Commissioner, Office of Automation Support (S2L).

C. The immediate Office of the Associate Commissioner, Office of Automation Support (S2L).

D. The Software Implementation Process Team (S2LA).

E. The Technology Support Process Team (S2LB).

Establish:

F. The Electronic Service Delivery Process Team (S2LC).

1. Serves as the focal point for user components to define operational requirements for electronic service delivery initiatives/issues. Examples of such initiatives include internet and intranet access and application development, data exchanges with local, State and Federal agencies and walk-up information systems in a kiosk environment that are self-service, client-initiated and client-specific.

2. Supports field components in integrating electronic service delivery technology into day-to-day environments.

3. Identifies operational needs and works through other Central Office components to plan, direct and evaluate the expansion of SSA monthly benefit applications and other documents that can be completed and submitted for processing via the internet.

4. Consistent with operational needs, works to promote the Agency's purchase of electronic data from private/commercial sources for use in SSA application processes.

5. Works with other SSA components to ensure that operational needs are addressed in the development of policies governing the Agency's optional use and acceptance of electronic documents and signatures.

Dated: August 17, 1999.

Paul D. Barnes,

Deputy Commissioner for Human Resources.

[FR Doc. 99–22733 Filed 8–31–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 1999–6154]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Merchant Marine Personnel Advisory Committee (MERPAC) and its working groups will meet to discuss various issues relating to the training and fitness of merchant marine personnel. MERPAC advises the Secretary of Transportation on matters relating to the training, qualifications, licensing, certification and fitness of seamen serving in the U.S. merchant marine. All meetings will be open to the public.

DATES: MERPAC will meet on Tuesday, September 28, 1999, from 8 a.m. to 4 p.m. and on Wednesday, September 29, from 8 a.m. to 3:00 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before September 14, 1999. Requests to have a copy of your material distributed to each member of the committee or subcommittee should reach the Coast Guard on or before September 14, 1999.

ADDRESSES: MERPAC will meet on both days in the Liberty Room of the Academic Building, MEBA Engineering School, 27050 St. Michaels Rd., Easton, MD 20593–0001. Further directions regarding the location of the MEBA Engineering School may be obtained by contacting Mr. Lee Kincaid of MEBA at (410) 822–5228 or (410) 822–9600. Send written material and requests to make oral presentations to Commander Steven J. Boyle, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Commander Steven J. Boyle, Executive Director of MERPAC, or Mr. Mark C. Gould, Assistant to the Executive Director, telephone 202–267–0229, fax 202–267–4570, or e-mail mgould@comdt.uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of September 28, 1999, Meeting

The full committee will meet to discuss the objectives for the meeting. The committee will then break up into the following working groups: the working group on the International Convention on the Standards of Training, Certification and Watchkeeping (STCW), specifically addressing the Assessment of Proficiencies as Mandated by the Amended 1995 STCW Convention; and the working group addressing evidence of five-year recency in the four elements of basic training. New working groups may be formed to address any new issues or tasks. At the end of the day, the working groups will make a report to the full committee on what has been accomplished in their meetings. No action will be taken on these reports on this date.

Agenda of September 29, 1999, Meeting

Merchant Marine Personnel Advisory Committee (MERPAC)

The agenda includes the following:

(1) Introduction.
(2) Working Group Reports.
(3) Other items to be discussed:
  (a) Standing Committee—Prevention Through People
  (b) STCW developments
  (c) Assessment of Proficiencies as Mandated by the Amended 1995 STCW Convention
  (d) Other items brought up for discussion by the committee or the public

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than September 14, 1999. Written material for distribution at a meeting should also reach the Coast Guard no later than September 14, 1999. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than September 7, 1999.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the

meetings, contact the Executive Director as soon as possible.

Dated: Aug 25, 1999.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 99–22750 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Dane County Regional Airport, Madison, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dane County Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before October 1, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Peter L. Drahn, Airport Director of the County of Dane, Madison, WI at the following address: 4000 International Lane, Madison, WI 53704–3120. Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Dane under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Program Manager, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450, 612–713–4363. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dane County Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 10, 1999 the FAA determined that the application to impose and use the revenue from a PFC submitted by County of Dane was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 9, 1999.

The following is a brief overview of the application.

PFC application number: 99–04–C–00–MSN.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 2000.

Total estimated PFC revenue: $9,716,667.00.

Brief description of proposed projects: Reconstruct runway 18/36, Upgrade airport security system, Relocate terminal entrance road, Land acquisition for terminal area expansion. Class or classes of air carriers which the public agency has requested not be required to collect PFCs: FAR Part 135 Air Taxi.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Dane.

Issued in Des Plaines, Illinois on August 24, 1999.

Cameron Bryan,

Acting Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 99–22757 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (99–02–C–00–PUW) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Pullman-Moscow Regional Airport, Submitted by the City of Pullman, Pullman-Moscow Regional Airport, Pullman, WA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose an use PFC revenue at Pullman-Moscow Regional Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before October 1, 1999.

ADDRESSES: Comments on this application maybe mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW Suite 250; Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to David Crowner, Airport Manager, at the following address: P.O. Box 249, Pullman, WA 99163.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Pullman-Moscow Regional Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mary E. Vargas, completed (425) 227–2660 SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW Suite 250; Renton, WA 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comments on the application (99–02–C–00–PUW) to impose and use PFC revenue at Pullman-Moscow Regional Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 25, 1999, the FAA determined that the application to impose and use the revenue from a PPC submitted by City of Pullman, Pullman-Moscow Regional Airport, Pullman, Washington, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 27, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 2000.

Proposed charge expiration date: March 1, 2005.

Total requested for use approval: $714,731.00.

Brief description of proposed project: Impose and Use projects: New ARFF Vehicle, Develop Storm Water Pollution Prevention Plan, Expand General Aviation Ramp, Rehabilitate Taxiway A

and four Connecting Taxiways, Rehabilitate the Aircraft Rescue and Fire Fighting (ARFF) Building, Purchase Snow Blower, Airport Drainage Improvements, Purchase RPZ Land, Storm Water Pollution Prevention Plan Update, Install PAPI–Runway 05 and 23, Runway Safety Area (RSA) Grading Improvements, Runway 23, Install REIL's and Improve Runway 5 Safety Area, Purchase of Emergency Generator, Ramp Reconstruction—General Aviation, Wildlife/Security Fencing, and Connecting Taxiway ''B'' Rehabilitation.

Impose Only projects: Purchase land leased from Washington State University, Purchase new Snow Plow, Rehabilitate Terminal Apron, Rehabilitate Runway 05–23, Taxiway Edge Lighting.

Class or classes of air carriers, which the public agency has requested not be required to collect PFC's: Air Taxi/Commercial operations who conduct operations in air commerce carrying persons for compensation or hire.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW, Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Pullman-Moscow Regional Airport.

Issued in Renton, Washington on August 25, 1999.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 99–22756 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on April 12, 1999 [64 FR 17714–17715].

DATES: Comments must be submitted on or before October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Higley at the National Highway Traffic Safety Administration, Office of State and Community Services (NSC–01), 202–366–0743. 400 Seventh Street, SW, Room 5238, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 23 CFR Part 1210—Certification Requirements for State Laws Concerning Intoxicated Minor Age Drivers.

OMB Number: 2127–0582.

Type of Request: Extension of a currently approved collection.

Abstract: The National Highway System Designation Act of 1995, Pub. L. 104–59 was signed into law on November 28, 1995. Section 320 of the Act established a new section 161 of Title 23, United States Code (Section 161), which requires the withholding of certain Federal-aid highway funds from States that do not enact and enforce ''zero tolerance'' laws. States must certify that they comply with section 161 which provides that these ''zero tolerance'' laws must consider an individual under the age of 21 who has a blood alcohol concentration of 0.02 percent or greater while operating a motor vehicle in the State, to be driving while intoxicated or driving under the influence of alcohol.

Affected Public: Those states, local and tribal governments that do not enact or enforce the Zero Tolerance laws.

Estimated Total Annual Burden: 52.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention NHTSA Desk Officer.

Comments Are Invited On

Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on August 26, 1999.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 99–22759 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, D.C.

DATE: The meeting will be held September 28 and 29, 1999.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on September 28 and 29, 1999 in Room 4600E beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, C:AP:AS 1099 14th Street, NW, Washington, DC 20005. Telephone (202) 694–1861, (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a closed meeting of the Art Advisory Panel will be held on September 28 and 29, 1999 in Room 4600E beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW, Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7) of

Title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a significant regulatory action as defined in Executive Order 12866 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Charles O. Rossotti,

Commissioner of Internal Revenue.

[FR Doc. 99–22798 Filed 8–31–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0006]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on VA Form 21–614, which is used by dependents of deceased veterans for the sole purpose of making a claim for accrued benefits available at the time of the veteran's death.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 1, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0006'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Accrued Amounts of Veteran's Benefits Payable to Surviving Spouse, Child or Dependent Parents, VA Form 21–614.

OMB Control Number: 2900–0006.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA Form 21–614 is used by dependents of deceased veterans for the sole purpose of making a claim for accrued benefits available at the time of the veteran's death.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,200 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 2,400.

Dated: July 12, 1999.

By direction of the Secretary.

Sandra S. McIntyre,

Management and Program Analyst, Information Management Service.

[FR Doc. 99–22806 Filed 8–31–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0009]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 1, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: James Good, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8001 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0009.''

SUPPLEMENTARY INFORMATION:

Title: Disabled Veterans Application for Vocational Rehabilitation, VA Form 28–1900.

OMB Control Number: 2900–0009.

Type of Review: Revision of a currently approved collection.

Abstract: Veterans with compensable service-connected disabilities use this form to apply for vocational rehabilitation under 38 U.S.C. chapter 31. The application obtains information used to determine basic entitlement, schedule an evaluation, and determine final eligibility for the benefit.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 5, 1999 at page 16523–16524.

Affected Public: Individuals or households.

Estimated Annual Burden: 13,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 54,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0009'' in any correspondence.

Dated: June 15, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–22807 Filed 8–31–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0064]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before October 1, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: James Good, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8001 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0064.''

SUPPLEMENTARY INFORMATION:

Title: Application for Amounts Due Estates of Persons Entitled to Benefits, VA Form 21–609.

OMB Control Number: 2900–0064.

Type of Review: Extension of a currently approved collection.

Abstract: The VA Form 21–609 is used to gather information to determine the individual(s) who may be entitled to accrued benefits of deceased beneficiaries.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 23, 1999 at page 20059.

Affected Public: Individuals or Households.

Estimated Annual Burden: 375 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 750.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0064'' in any correspondence.

Dated: June 15, 1999.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–22808 Filed 8–31–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0161]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 1, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: James Good, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8001 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0161.''

SUPPLEMENTARY INFORMATION:

Title: Medical Expense Report, VA Form 21–8416.

OMB Control Number: 2900–0161.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: This form is used to collect information about unreimbursed medical expenses paid by claimants.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 23, 1999 at page 20060.

Affected Public: Individuals or Households.

Estimated Annual Burden: 48,200 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 96,400.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0161'' in any correspondence.

Dated: July 9, 1999.

By direction of the Secretary.

Sandra S. McIntyre,

Management and Program Analyst, Information Management Service.

[FR Doc. 99–22809 Filed 8–31–99; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0408]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and

Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 1, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: James Good, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8001 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0408.''

SUPPLEMENTARY INFORMATION:

Title and Form Numbers: Manufactured Home Loan Claim Under Loan Guaranty (Manufactured Home Unit Only), VA Form 26–8629, and Manufactured Home Loan Claim Under Loan Guaranty (Combination Loan—Manufactured Home Unit and Lot or Lot only), VA Form 26–8630.

OMB Control Number: 2900–0408.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 26–8629 and 26–8630 are submitted by holders of foreclosed VA guaranteed manufactured home unit and combination loans. Information is needed to determine claim payment due.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 29, 1999 at page 4748.

Affected Public: Individuals or Households, Business or other for-profit.

Estimated Annual Burden: 36 hours.

Estimated Average Burden Per Respondent:

VA Form 26–8629—20 minutes.

VA Form 26–8630—20 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 110.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0408'' in any correspondence.

Dated: July 9, 1999.

By direction of the Secretary.

Sandra S. McIntyre,

Management and Program Analyst, Information Management Service

[FR Doc. 99–22810 Filed 8–31–99; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0556]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 1, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: James Good, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8001 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0556.''

SUPPLEMENTARY INFORMATION:

Title: VA Advance Directive: Living Will and Durable Power of Attorney for Health Care, VA Form 10–0137.

OMB Control Number: 2900–0556.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: VA Form 10–0137, is used for the purpose of documenting a VA patient's specific instructions about health care decisions to be carried out in the event patient is no longer competent or able to give those instructions or make those choices verbally.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 23, 1998 at pages 71191–71192.

Affected Public: Individuals or Households.

Estimated Annual Burden: 101,250 hours.

Estimated Average Burden Per Respondent: 25 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 243,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0556'' in any correspondence.

Dated: July 2, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–22811 Filed 8–31–99; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice that a meeting of the Advisory Committee on Cemeteries and Memorials, authorized by 38 U.S.C. 2401, will be held Sunday, October 3, and Monday, October 4, 1999, at the Hampton Inn I–55, Joliet, IL. This will be the Committee's first meeting of Fiscal Year 2000.

The purpose of the Committee is to review the administration of VA's cemeteries and burial benefits program. The meeting will convene on Sunday, October 3, at 8:30 a.m. (CT) and adjourn at 5:00 p.m. (CT). On Monday, October 4, the meeting will reconvene at 8:00 a.m. (CT) and adjourn at 4:30 p.m. (CT).

On Sunday, October 3, the Committee will participate in the dedication ceremony of the new Abraham Lincoln National Cemetery in Joliet, Illinois.

On Monday, October 4, the Committee will reconvene for updates and reports on National Cemetery Administration (NCA) issues, including memorials, cemetery construction, and current legislation.

The meeting will be open to the public. Individuals wishing to attend the meeting should contact Mrs. Paige Lowther, Designated Federal Official, National Cemetery Administration, [phone (202) 273–5164] no later than 12 noon (EDT), September 27, 1999.

Any interested person may attend, appear before, or file a statement with the Committee. Individuals wishing to appear before the Committee should indicate this in a letter to Mrs. Paige Lowther, Designated Federal Official, National Cemetery Administration (40), 810 Vermont Avenue, NW, Washington, DC. 20420. In any such letters, the writers must fully identify themselves and state the organization, association or person(s) they represent. In addition, to the extent practicable, letters should indicate the subject matter to be discussed. Oral presentations should be limited to 10 minutes in duration. Individuals wishing to file written statements to be submitted to the Committee must also mail, or otherwise deliver, them to Mrs. Paige Lowther, Designated Federal Official, National Cemetery Administration.

Letters and written statements as discussed above must be mailed or delivered in time to reach Mrs. Paige Lowther, Designated Federal Official, National Cemetery Administration, by 12 noon (EDT), September 30, 1999. Oral statements will be heard between 1:00 p.m. and 1:30 p.m. (EDT), October 4, 1999, at the Hampton Inn, I–55, Joliet, IL.

Dated: August 16, 1999.

By Direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 99–22805 Filed 8–31–99; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Wednesday
September 1, 1999

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 1000, et al.

Milk in the New England and Other Marketing Areas; Order Amending the Orders; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1002, 1004, 1005, 1006, 1007, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1124, 1126, 1131, 1134, 1135, 1137, 1138 and 1139

[DA–97–12]

Milk in the New England and Other Marketing Areas; Order Amending the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

7 CFR part	Marketing area
1000	General Provisions of Federal Milk Marketing Orders.
1001	New England.
1002	New York-New Jersey.
1004	Middle Atlantic.
1005	Carolina.
1006	Upper Florida.
1007	Southeast.
1012	Tampa Bay.
1013	Southeastern Florida.
1030	Chicago Regional.
1032	Southern Illinois-Eastern Missouri.
1033	Ohio Valley.
1036	Eastern Ohio-Western Pennsylvania.
1040	Southern Michigan.
1044	Michigan Upper Peninsula.
1046	Louisville-Lexington-Evansville.
1049	Indiana.
1050	Central Illinois.
1064	Greater Kansas City.
1065	Nebraska-Western Iowa.
1068	Upper Midwest.
1076	Eastern South Dakota.
1079	Iowa.
1106	Southwest Plains.
1124	Pacific Northwest.
1126	Texas.
1131	Central Arizona.
1134	Western Colorado.
1135	Southwestern Idaho-Eastern Oregon.
1137	Eastern Colorado.
1138	New Mexico-West Texas.
1139	Great Basin.

SUMMARY: This final rule consolidates the current 31 Federal milk marketing orders into 11 orders. This consolidation complies with the 1996 Farm Bill which mandates that the current Federal milk orders be consolidated into between 10 to 14 orders. This final rule will be effective for milk marketed on or after October 1, 1999, thereby conforming to the Omnibus Consolidated and Emergency Supplemental Appropriations Bill, which required that the Federal milk order reform amendments be implemented on October 1, 1999. This rule sets forth a replacement for the Class I price structure and replaces the basic formula price with a multiple component pricing system. This rule also establishes a new Class IV which includes milk used to produce nonfat dry milk, butter, and other dry milk powders; reclassifies eggnog; and addresses other minor changes. Part 1000 is expanded to include sections that are identical in all of the consolidated orders to assist in simplifying and streamlining the orders.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Branch Chief, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274, e-mail address John.Borovies@usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12988

The contents of this final rule were reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect and will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937 (AMAA), as amended, provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Executive Order 12866

The Department is issuing this final rule in conformance with Executive Order 12866. The final rule is determined to be economically significant for the purposes of Executive Order 12866. To comply with the requirements of Executive Order 12866, the Department prepared a final Regulatory Impact Analysis (RIA). Information contained in the RIA pertains to the costs and benefits of the revised regulatory structure contained in this final rule and is explained and summarized in detail in the final decision (64 FR 16030). Copies of the RIA can be obtained from Dairy Programs at (202) 720–4392, any Market Administrator office, or via the Internet at http://www.ams.usda.gov/dairy.

Civil Rights Impact Analysis

Pursuant to Departmental Regulation (DR) 4300–4, a Civil Rights Impact Analysis (CRIA) was completed that reviewed the reforms to the Federal milk marketing order program implemented by this final rule to identify any provisions with actual or potential adverse effects for minorities, women, and persons with disabilities. The analysis disclosed no potential for affecting dairy farmers with specific characteristics differently than the general population of dairy farmers. All producers, regardless of race, national origin, or disability choosing to deliver milk to a Federal order regulated handler will receive the minimum blend price.

Copies of the Civil Rights Impact Analysis can be obtained from Dairy Programs at (202) 720–4392; any Market Administrator office; or via the Internet at http://www.ams.usda.gov/dairy/.

Small Business Consideration

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) considered the economic impact of the reforms to the Federal milk marketing order program implemented by this final rule on small entities and prepared a final regulatory flexibility analysis that was included in the final decision (64 FR 16034). The analysis indicates that the Department minimized the significant economic impacts of the regulations on small entities to the fullest extent reasonably possible while adhering to the stated objectives. The Department reviewed the regulatory and financial burdens resulting from the regulations and determined, to the fullest extent possible, the impact on small businesses' abilities to compete in the market place. The Department reviewed the regulations from both the small producer and small processor perspectives attempting to maintain a balance between these competing interests.

Copies of the final regulatory impact analysis can be obtained from Dairy Programs at (202) 720–4392; any Market

Administrator office; or via the Internet at http://www.ams.usda.gov/dairy/.

Paperwork Reduction Act of 1995

The information collection requirements contained in this final rule previously were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0581–0032, through September 30, 2001.

Prior Documents in This Proceeding

Proposed Rule: Issued January 21, 1998; published January 30, 1998 (63 FR 4802).

Correction: Issued February 19, 1998; published February 25, 1998 (63 FR 9686).

Extension of Time: Issued March 10, 1998; published March 13,1998 (63 FR 12417).

Final Decision on Proposed Amendments: Issued March 12, 1999; published April 2, 1999 (64 FR 16026).

Correction: Issued July 8, 1999; published July 14, 1999 (64 FR 37892).

Notice of Referenda: Issued July 14, 1999; published July 21, 1999 (64 FR 39092).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid orders:

Upon the basis of the record of this proceeding it is found that:

(1) The said orders, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the orders, as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said orders, as hereby amended, regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements;

(4) All milk and milk products handled by handlers, as defined in the orders as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrators for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1000.85 of the General Provisions.

(b) Additional Findings. It is necessary in the public interest to make these amendments to each of the orders effective for milk marketed on or after October 1, 1999. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the specified marketing areas.

The amendments to these orders are known to handlers. The final decision containing the proposed amendments to these orders was issued on March 12, 1999.

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the specified marketing areas, to sign proposed marketing agreements, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending each of the specified orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the respective orders as hereby amended; and

(3) The issuance of the order amending the specified orders is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing areas.

List of Subjects in 7 CFR Parts 1000, 1001, 1002, 1004, 1005, 1006, 1007, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1124, 1126, 1131, 1134, 1135, 1137, 1138 and 1139

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in each of the aforesaid marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby further amended, as follows:

For the reasons set forth in the preamble and under the authority of Title 7, chapter X, Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135 are revised and Parts 1002, 1004, 1012, 1013, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1134, 1137, 1138 and 1139 are removed and reserved as follows:

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

Subpart A—Scope and Purpose

Sec.

1000.1 Scope and purpose of this part 1000.

Subpart B—Definitions

1000.2 General definitions.
1000.3 Route disposition.
1000.4 Plant.
1000.5 Distributing plant.
1000.6 Supply plant.
1000.8 Nonpool plant.
1000.9 Handler.
1000.14 Other source milk.
1000.15 Fluid milk product.
1000.16 Fluid cream product.
1000.17 [Reserved]
1000.18 Cooperative association.
1000.19 Commercial food processing establishment.

Subpart C—Rules of Practice and Procedure Governing Market Administrators

1000.25 Market administrator.

Subpart D—Rules Governing Order Provisions

1000.26 Continuity and separability of provisions.

Subpart E—Rules of Practice and Procedure Governing Handlers

1000.27 Handler responsibility for records and facilities.
1000.28 Termination of obligations.

Subpart F—Classification of Milk

1000.40 Classes of utilization.
1000.41 [Reserved]
1000.42 Classification of transfers and diversions.
1000.43 General classification rules.
1000.44 Classification of producer milk.
1000.45 Market administrator's reports and announcements concerning classification.

Subpart G—Class Prices

1000.50 Class prices, component prices, and advanced pricing factors.
1000.51 [Reserved]
1000.52 Adjusted Class I differentials.
1000.53 Announcement of class prices, component prices, and advanced pricing factors.
1000.54 Equivalent price.

Subpart H—Payments for Milk

1000.70 Producer-settlement fund.
1000.76 Payments by a handler operating a partially regulated distributing plant.
1000.77 Adjustment of accounts.
1000.78 Charges on overdue accounts.

Subpart I—Administrative Assessment and Marketing Service Deduction

1000.85 Assessment for order administration.
1000.86 Deduction for marketing services.

Subpart J—Miscellaneous Provisions

1000.90 Dates.
1000.91 [Reserved]
1000.92 [Reserved]
1000.93 OMB control number assigned pursuant to the Paperwork Reduction Act.

Authority: 7 U.S.C. 601–674, and 7253.

Subpart A—Scope and Purpose

§ 1000.1 Scope and purpose of this part 1000.

This part sets forth certain terms, definitions, and provisions which shall be common to and apply to Federal milk marketing order in 7 CFR, chapter X, except as specifically defined otherwise, or modified, or otherwise provided, in an individual order in 7 CFR, chapter X.

Subpart B—Definitions

§ 1000.2 General definitions.

(a) *Act* means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*).

(b) *Order* or *Federal milk order* means the applicable part of 7 CFR, chapter X, issued pursuant to Section 8c of the Act as a Federal milk marketing order (as amended).

(c) *Department* means the U.S. Department of Agriculture.

(d) *Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(e) *Person* means any individual, partnership, corporation, association, or other business unit.

§ 1000.3 Route disposition.

Route disposition means a delivery to a retail or wholesale outlet (except a plant), either directly or through any distribution facility (including disposition from a plant store, vendor, or vending machine) of a fluid milk product in consumer-type packages or dispenser units classified as Class I milk.

§ 1000.4 Plant.

(a) Except as provided in paragraph (b) of this section, *plant* means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products are received, processed, or packaged, including a facility described in paragraph (b)(2) of this section if the facility receives the milk of more than one dairy farmer.

(b) Plant shall not include:

(1) A separate building without stationary storage tanks that is used only as a reload point for transferring bulk milk from one tank truck to another or a separate building used only as a distribution point for storing packaged fluid milk products in transit for route disposition; or

(2) An on-farm facility operated as part of a single dairy farm entity for the separation of cream and skim or the removal of water from milk.

§ 1000.5 Distributing plant.

Distributing plant means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk at which fluid milk products are processed or packaged and from which there is route disposition or transfers of packaged fluid milk products to other plants.

§ 1000.6 Supply plant.

Supply plant means a plant approved by a duly constituted regulatory agency for the handling of Grade A milk that receives milk directly from dairy farmers and transfers or diverts fluid milk products to other plants or manufactures dairy products on its premises.

§ 1000.8 Nonpool plant.

Nonpool plant means any milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) *A plant fully regulated under another Federal order* means a plant that is fully subject to the pricing and pooling provisions of another Federal order.

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined under any Federal order.

(c) *Partially regulated distributing plant* means a nonpool plant that is not a plant fully regulated under another Federal order, a producer-handler plant, or an exempt plant, from which there is route disposition in the marketing area during the month.

(d) *Unregulated supply plant* means a supply plant that does not qualify as a pool supply plant and is not a plant fully regulated under another Federal order, a producer-handler plant, or an exempt plant.

(e) *An exempt plant* means a plant described in this paragraph that is exempt from the pricing and pooling provisions of any order provided that the operator of the plant files reports as prescribed by the market administrator of any marketing area in which the plant distributes packaged fluid milk products to enable determination of the handler's exempt status:

(1) A plant that is operated by a governmental agency that has no route disposition in commercial channels;

(2) A plant that is operated by a duly accredited college or university disposing of fluid milk products only through the operation of its own facilities with no route disposition in commercial channels;

(3) A plant from which the total route disposition is for individuals or institutions for charitable purposes without remuneration; or

(4) A plant that has route disposition and packaged sales of fluid milk products to other plants of 150,000 pounds or less during the month.

§ 1000.9 Handler.

Handler means:

(a) Any person who operates a pool plant or a nonpool plant.

(b) Any person who receives packaged fluid milk products from a plant for resale and distribution to retail or wholesale outlets, any person who as a broker negotiates a purchase or sale of fluid milk products or fluid cream products from or to any pool or nonpool plant, and any person who by purchase or direction causes milk of producers to be picked up at the farm and/or moved to a plant. Persons who qualify as handlers only under this paragraph under any Federal milk order are not subject to the payment provisions of §§ _____.70, _____.71, _____.72, _____.73, _____.76, and _____.85 of that order.

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer and delivers to pool plants or diverts to nonpool plants pursuant to § _____.13 of the order. The operator of a pool plant receiving milk from a cooperative association may be the handler for such milk if both parties notify the market administrator of this agreement prior to the time that the milk is delivered to the pool plant and the plant operator purchases the milk on the basis of farm bulk tank weights and samples.

§ 1000.14 Other source milk.

Other source milk means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, handlers described in § 1000.9(c) and § 1135.11, or pool plants;

(b) Products (other than fluid milk products, fluid cream products, and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(c) Receipts of any milk product (other than a fluid milk product or a fluid cream product) for which the handler fails to establish a disposition.

§ 1000.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, *fluid milk product* means any milk products in fluid or frozen form containing less than 9 percent butterfat that are intended to be used as beverages. Such products include, but are not limited to: Milk, fat-free milk, lowfat milk, light milk, reduced fat milk, milk drinks, eggnog and cultured buttermilk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated, or reconstituted. As used in this part, the term *concentrated milk* means milk that contains not less than 25.5 percent, and not more than 50 percent, total milk solids.

(b) The term fluid milk product shall not include:

(1) Plain or sweetened evaporated milk/skim milk, sweetened condensed milk/skim milk, formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk equivalent in any modified product specified in paragraph (a) of this section that is greater than an equal volume of an unmodified product of the same nature and butterfat content.

§ 1000.16 Fluid cream product.

Fluid cream product means cream (other than plastic cream or frozen cream), including sterilized cream, or a mixture of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1000.17 [Reserved]

§ 1000.18 Cooperative association.

Cooperative association means any cooperative marketing association of producers which the Secretary determines is qualified under the provisions of the Capper-Volstead Act, has full authority in the sale of milk of its members, and is engaged in marketing milk or milk products for its members. A federation of 2 or more cooperatives incorporated under the laws of any state will be considered a cooperative association under any Federal milk order if all member cooperatives meet the requirements of this section.

§ 1000.19 Commercial food processing establishment.

Commercial food processing establishment means any facility, other than a milk plant, to which fluid milk products and fluid cream products are disposed of, or producer milk is diverted, that uses such receipts as ingredients in food products and has no other disposition of fluid milk products other than those received in consumer-type packages (1 gallon or less). Producer milk diverted to commercial food processing establishments shall be subject to the same provisions relating to diversions to plants, including, but not limited to, §§ _____.13 and _____.52 of each Federal milk order.

Subpart C—Rules of Practice and Procedure Governing Market Administrators

§ 1000.25 Market administrator.

(a) *Designation.* The agency for the administration of the order shall be a market administrator selected by the Secretary and subject to removal at the Secretary's discretion. The market administrator shall be entitled to compensation determined by the Secretary.

(b) *Powers.* The market administrator shall have the following powers with respect to each order under his/her administration:

(1) Administer the order in accordance with its terms and provisions;

(2) Maintain and invest funds outside of the United States Department of the Treasury for the purpose of administering the order;

(3) Make rules and regulations to effectuate the terms and provisions of the order;

(4) Receive, investigate, and report complaints of violations to the Secretary; and

(5) Recommend amendments to the Secretary.

(c) *Duties.* The market administrator shall perform all the duties necessary to administer the terms and provisions of each order under his/her administration, including, but not limited to, the following:

(1) Employ and fix the compensation of persons necessary to enable him/her to exercise the powers and perform the duties of the office;

(2) Pay out of funds provided by the administrative assessment, except expenses associated with functions for which the order provides a separate charge, all expenses necessarily incurred in the maintenance and functioning of the office and in the performance of the duties of the office, including the market administrator's compensation;

(3) Keep records which will clearly reflect the transactions provided for in the order and upon request by the Secretary, surrender the records to a successor or such other person as the Secretary may designate;

(4) Furnish information and reports requested by the Secretary and submit office records for examination by the Secretary;

(5) Announce publicly at his/her discretion, unless otherwise directed by the Secretary, by such means as he/she deems appropriate, the name of any handler who, after the date upon which the handler is required to perform such act, has not:

(i) Made reports required by the order;

(ii) Made payments required by the order; or

(iii) Made available records and facilities as required pursuant to § 1000.27;

(6) Prescribe reports required of each handler under the order. Verify such reports and the payments required by the order by examining records (including such papers as copies of income tax reports, fiscal and product accounts, correspondence, contracts, documents or memoranda of the handler, and the records of any other persons that are relevant to the handler's obligation under the order), by examining such handler's milk handling facilities, and by such other investigation as the market administrator deems necessary for the purpose of ascertaining the correctness of any report or any obligation under the order. Reclassify skim milk and butterfat received by any handler if such examination and investigation discloses that the original classification was incorrect;

(7) Furnish each regulated handler a written statement of such handler's accounts with the market administrator promptly each month. Furnish a

corrected statement to such handler if verification discloses that the original statement was incorrect; and

(8) Prepare and disseminate publicly for the benefit of producers, handlers, and consumers such statistics and other information concerning operation of the order and facts relevant to the provisions thereof (or proposed provisions) as do not reveal confidential information.

Subpart D—Rules Governing Order Provisions

§ 1000.26 Continuity and separability of provisions.

(a) *Effective time.* The provisions of the order or any amendment to the order shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

(b) *Suspension or termination.* The Secretary shall suspend or terminate any or all of the provisions of the order whenever he/she finds that such provision(s) obstructs or does not tend to effectuate the declared policy of the Act. The order shall terminate whenever the provisions of the Act authorizing it cease to be in effect.

(c) *Continuing obligations.* If upon the suspension or termination of any or all of the provisions of the order there are any obligations arising under the order, the final accrual or ascertainment of which requires acts by any handler, by the market administrator or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination.

(d) *Liquidation.* (1) Upon the suspension or termination of any or all provisions of the order the market administrator, or such other liquidating agent designated by the Secretary, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his/her possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition; and

(2) If a liquidating agent is so designated, all assets and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

(e) *Separability of provisions.* If any provision of the order or its application to any person or circumstances is held invalid, the application of such provision and of the remaining provisions of the order to other persons or circumstances shall not be affected thereby.

Subpart E—Rules of Practice and Procedure Governing Handlers

§ 1000.27 Handler responsibility for records and facilities.

Each handler shall maintain and retain records of its operations and make such records and its facilities available to the market administrator. If adequate records of a handler, or of any other persons, that are relevant to the obligation of such handler are not maintained and made available, any skim milk and butterfat required to be reported by such handler for which adequate records are not available shall be considered as used in the highest-priced class.

(a) *Records to be maintained.* (1) Each handler shall maintain records of its operations (including, but not limited to, records of purchases, sales, processing, packaging, and disposition) as are necessary to verify whether such handler has any obligation under the order and if so, the amount of such obligation. Such records shall be such as to establish for each plant or other receiving point for each month:

(i) The quantities of skim milk and butterfat contained in, or represented by, products received in any form, including inventories on hand at the beginning of the month, according to form, time, and source of each receipt;

(ii) The utilization of all skim milk and butterfat showing the respective quantities of such skim milk and butterfat in each form disposed of or on hand at the end of the month; and

(iii) Payments to producers, dairy farmers, and cooperative associations, including the amount and nature of any deductions and the disbursement of money so deducted.

(2) Each handler shall keep such other specific records as the market administrator deems necessary to verify or establish such handler's obligation under the order.

(b) *Availability of records and facilities.* Each handler shall make available all records pertaining to such handler's operations and all facilities the market administrator finds are necessary to verify the information required to be reported by the order and/or to ascertain such handler's reporting, monetary, or other obligation under the order. Each handler shall permit the market administrator to weigh, sample, and test milk and milk products and observe plant operations and equipment and make available to the market administrator such facilities as are necessary to carry out his/her duties.

(c) *Retention of records.* All records required under the order to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the month to which such records pertain. If, within such 3-year period, the market administrator notifies the handler in writing that the retention of such records, or of specified records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such records, or specified records, until further written notification from the market administrator. The market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

§ 1000.28 Termination of obligations.

(a) Except as provided in paragraphs (b) and (c) of this section, the obligation of any handler to pay money required to be paid under the terms of the order shall terminate 2 years after the last day of the month during which the market administrator receives the handler's report of receipts and utilization on which such obligation is based, unless within such 2-year period, the market administrator notifies the handler in writing that such money is due and payable. Service of such written notice shall be complete upon mailing to the handler's last known address and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) on which such obligation is based; and

(3) If the obligation is payable to one or more producers or to a cooperative association, the name of such producer(s) or such cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under the order, to make available to the market administrator all records required by the order to be made available, the market administrator may notify the handler in writing, within the 2-year period provided for in paragraph (a) of this section, of such failure or refusal. If the

market administrator so notifies a handler, the said 2-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which all such records pertaining to such obligation are made available to the market administrator.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under the order to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Unless the handler files a petition pursuant to section 8c(15)(A) of the Act and the applicable rules and regulations (7 CFR 900.50 through 900.71) within the applicable 2-year period indicated below, the obligation of the market administrator:

(1) To pay a handler any money which such handler claims is due under the terms of the order shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claim were received; or

(2) To refund any payment made by a handler (including a deduction or offset by the market administrator) shall terminate 2 years after the end of the month during which payment was made by the handler.

Subpart F—Classification of Milk

§ 1000.40 Classes of utilization.

Except as provided in § 1000.42, all skim milk and butterfat required to be reported pursuant to § ——.30 of each Federal milk order shall be classified as follows:

(a) *Class I milk* shall be all skim milk and butterfat:

(1) Disposed of in the form of fluid milk products, except as otherwise provided in this section;

(2) In packaged fluid milk products in inventory at the end of the month; and

(3) In shrinkage assigned pursuant to § 1000.43(b).

(b) *Class II milk* shall be all skim milk and butterfat:

(1) In fluid milk products in containers larger than 1 gallon and fluid cream products disposed of or diverted to a commercial food processing establishment if the market administrator is permitted to audit the records of the commercial food processing establishment for the purpose of verification. Otherwise, such uses shall be Class I;

(2) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, ricotta cheese, pot cheese, Creole cheese, and any similar soft, high-moisture cheese resembling cottage cheese in form or use;

(ii) Milkshake and ice milk mixes (or bases), frozen desserts, and frozen dessert mixes distributed in half-gallon containers or larger and intended to be used in soft or semi-solid form;

(iii) Aerated cream, frozen cream, sour cream, sour half-and-half, sour cream mixtures containing nonmilk items, yogurt, and any other semi-solid product resembling a Class II product;

(iv) Custards, puddings, pancake mixes, coatings, batter, and similar products;

(v) Buttermilk biscuit mixes and other buttermilk for baking that contain food starch in excess of 2% of the total solids, provided that the product is labeled to indicate the food starch content;

(vi) Formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers;

(vii) Candy, soup, bakery products and other prepared foods which are processed for general distribution to the public, and intermediate products, including sweetened condensed milk, to be used in processing such prepared food products;

(viii) A fluid cream product or any product containing artificial fat or fat substitutes that resembles a fluid cream product, except as otherwise provided in paragraph (c) of this section; and

(ix) Any product not otherwise specified in this section; and

(3) In shrinkage assigned pursuant to § 1000.43(b).

(c) *Class III milk* shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cream cheese and other spreadable cheeses, and hard cheese of types that may be shredded, grated, or crumbled;

(ii) Plastic cream, anhydrous milkfat, and butteroil; and

(iii) Evaporated or sweetened condensed milk in a consumer-type package; and

(2) In shrinkage assigned pursuant to § 1000.43(b).

(d) *Class IV milk* shall be all skim milk and butterfat:

(1) Used to produce:

(i) Butter; and

(ii) Any milk product in dried form;

(2) In inventory at the end of the month of fluid milk products and fluid cream products in bulk form;

(3) In the skim milk equivalent of nonfat milk solids used to modify a fluid milk product that has not been accounted for in Class I; and

(4) In shrinkage assigned pursuant to § 1000.43(b).

(e) *Other uses.* Other uses include skim milk and butterfat used in any product described in this section that is dumped, used for animal feed, destroyed, or lost by a handler in a vehicular accident, flood, fire, or similar occurrence beyond the handler's control. Such uses of skim milk and butterfat shall be assigned to the lowest priced class for the month to the extent that the quantities destroyed or lost can be verified from records satisfactory to the market administrator.

§ 1000.41 [Reserved]

§ 1000.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant or a handler described in § 1135.11 of this chapter to another pool plant shall be classified as Class I milk unless the handlers both request the same classification in another class. In either case, the classification shall be subject to the following conditions:

(1) The skim milk and butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the receiving plant after the computations pursuant to § 1000.44(a)(9) and the corresponding step of § 1000.44(b);

(2) If the transferring plant received during the month other source milk to be allocated pursuant to § 1000.44(a)(3) or the corresponding step of § 1000.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferring handler received during the month other source milk to be allocated pursuant to § 1000.44(a)(8) or (9) or the corresponding steps of § 1000.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the receiving plant.

(b) *Transfers and diversions to a plant regulated under another Federal order.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant to a plant regulated under another Federal order shall be classified in the following manner. Such classification shall apply only to the skim milk or

butterfat that is in excess of any receipts at the pool plant from a plant regulated under another Federal order of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1) or (2) of this section:

(1) As Class I milk, if transferred as packaged fluid milk products;

(2) If transferred or diverted in bulk form, classification shall be in the classes to which allocated under the other order:

(i) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers in bulk form shall be classified as other than Class I to the extent that such utilization is available for such classification pursuant to the allocation provisions of the other order;

(ii) If diverted, the diverting handler must request a classification other than Class I. If the plant receiving the diverted milk does not have sufficient utilization available for the requested classification and some of the diverted milk is consequently assigned to Class I use, the diverting handler shall be given the option of designating the entire load of diverted milk as producer milk at the plant physically receiving the milk. Alternatively, if the diverting handler so chooses, it may designate which dairy farmers whose milk was diverted during the month will be designated as producers under the order physically receiving the milk. If the diverting handler declines to accept either of these options, the market administrator will prorate the portion of diverted milk in excess of Class II, III, and IV use among all the dairy farmers whose milk was received from the diverting handler on the last day of the month, then the second-to-last day, and continuing in that fashion until the excess diverted milk has been assigned as producer milk under the receiving order; and

(iii) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be Class I, subject to adjustment when such information is available.

(c) *Transfers and diversions to producer-handlers and to exempt plants.* Skim milk or butterfat that is transferred or diverted from a pool plant to a producer-handler under any Federal order or to an exempt plant shall be classified:

(1) As Class I milk if transferred or diverted to a producer-handler;

(2) As Class I milk if transferred to an exempt plant in the form of a packaged fluid milk product; and

(3) In accordance with the utilization assigned to it by the market administrator if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of a bulk fluid cream product to an exempt plant. For this purpose, the receiving handler's utilization of skim milk and butterfat in each class, in series beginning with Class IV, shall be assigned to the extent possible to its receipts of skim milk and butterfat, in bulk fluid cream products, and bulk fluid milk products, respectively, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not a plant regulated under another order, an exempt plant, or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i)(A) and (B) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization, excluding the milk equivalent of both nonfat milk solids and concentrated milk used in the plant during the month, to its receipts as set forth in paragraphs (d)(2)(ii) through (viii) of this section:

(A) The transferring handler or diverting handler claims such classification in such handler's report of receipts and utilization filed pursuant to § ____.30 of each Federal milk order for the month within which such transaction occurred; and

(B) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(B) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from plants regulated under other Federal orders;

(C) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(D) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from plants regulated under other Federal orders;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and plants regulated under other Federal orders;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant regulated under any Federal order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the receiving plant, shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(B) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from plants regulated under other Federal orders;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(A) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(B) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and plants regulated under other Federal orders shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization and then to all other utilization, in sequence beginning with Class IV at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool

plants and plants regulated under other Federal orders shall be assigned, pro rata among such plants, to the extent possible to any remaining utilization, in sequence beginning with Class IV at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

§ 1000.43 General classification rules.

In determining the classification of producer milk pursuant to § 1000.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § ____.30 of each Federal milk order and shall compute separately for each pool plant, for each handler described in § 1000.9(c) and § 1135.11 of this chapter, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1000.40 and 1000.42, and paragraph (b) of this section.

(b) *Shrinkage and Overage.* For purposes of classifying all milk reported by a handler pursuant to § ____.30 of each Federal milk order the market administrator shall determine the shrinkage or overage of skim milk and butterfat for each pool plant and each handler described in § 1000.9(c) and § 1135.11 of this chapter by subtracting total utilization from total receipts. Any positive difference shall be shrinkage, and any negative difference shall be overage.

(1) Shrinkage incurred by pool plants qualified pursuant to § ____.7 of any Federal milk order shall be assigned to the lowest-priced class to the extent that such shrinkage does not exceed:

(i) Two percent of the total quantity of milk physically received at the plant directly from producers' farms on the basis of farm weights and tests;

(ii) Plus 1.5 percent of the quantity of bulk milk physically received on a basis other than farm weights and tests, excluding concentrated milk received by agreement for other than Class I use;

(iii) Plus .5 percent of the quantity of milk diverted by the plant operator to another plant on a basis other than farm weights and tests; and

(iv) Minus 1.5 percent of the quantity of bulk milk transferred to other plants, excluding concentrated milk transferred by agreement for other than Class I use.

(2) A handler described in § 1000.9(c) or § 1135.11 of this chapter that delivers milk to plants on a basis other than farm weights and tests shall receive a lowest-priced-class shrinkage allowance of .5 percent of the total quantity of such milk picked up at producers' farms.

(3) Shrinkage in excess of the amounts provided in paragraphs (b)(1) and (2) of this section shall be assigned to existing utilization in series starting with Class I. The shrinkage assigned pursuant to this paragraph shall be added to the handler's reported utilization and the result shall be known as the *gross utilization in each class.*

(c) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by the handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids.

(d) Skim milk and butterfat contained in receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use shall be assigned to Class I use, up to the reconstituted portion of labeled reconstituted fluid milk products, on a pro rata basis (except for any Class I use of specific concentrated receipts that is established by the handler) prior to any assignments under § 1000.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under § 1000.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.

§ 1000.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1000.9(a) for each pool plant of the handler separately and for each handler described in § 1000.9(c) and § 1135.11 of this chapter the classification of producer milk by allocating the handler's receipts of skim milk and butterfat to the handler's gross utilization of such receipts pursuant to § 1000.43(b)(3) as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the pounds of skim milk in Class I the pounds of skim milk in:

(i) Receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(ii) Packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal order in the immediately preceding month;

(iii) Fluid milk products received in packaged form from plants regulated under other Federal orders; and

(iv) To the extent that the receipts described in paragraphs (a)(1)(i) through (iii) of this section exceed the gross Class I utilization of skim milk, the excess receipts shall be subtracted pursuant to paragraph (a)(3)(vi) of this section.

(2) Subtract from the pounds of skim milk in Class II the pounds of skim milk in the receipts of skim milk in bulk concentrated fluid milk products and in other source milk (except other source milk received in the form of an unconcentrated fluid milk product or a fluid cream product) that is used to produce, or added to, any product in Class II (excluding the quantity of such skim milk that was classified as Class IV milk pursuant to § 1000.40(d)(3)). To the extent that the receipts described in this paragraph exceed the gross Class II utilization of skim milk, the excess receipts shall be subtracted pursuant to paragraph (a)(3)(vi) of this section.

(3) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class IV, the pounds of skim milk in:

(i) Receipts of bulk concentrated fluid milk products and other source milk (except other source milk received in the form of an unconcentrated fluid milk product);

(ii) Receipts of fluid milk products and bulk fluid cream products for which appropriate health approval is not established and from unidentified sources;

(iii) Receipts of fluid milk products and bulk fluid cream products from an exempt plant;

(iv) Fluid milk products and bulk fluid cream products received from a producer-handler as defined under the order in this part, or any other Federal order;

(v) Receipts of fluid milk products from dairy farmers for other markets; and

(vi) The excess receipts specified in paragraphs (a)(1)(iv) and (a)(2) of this section.

(4) Subtract from the pounds of skim milk remaining in all classes other than Class I, in sequence beginning with Class IV, the receipts of fluid milk products from an unregulated supply

plant that were not previously subtracted in this section for which the handler requests classification other than Class I, but not in excess of the pounds of skim milk remaining in these other classes combined.

(5) Subtract from the pounds of skim milk remaining in all classes other than Class I, in sequence beginning with Class IV, receipts of fluid milk products from an unregulated supply plant that were not previously subtracted in this section, and which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(5)(i) and (ii) of this section;

(i) Multiply by 1.25 the pounds of skim milk remaining in Class I at this allocation step; and

(ii) Subtract from the result in paragraph (a)(5)(i) the pounds of skim milk in receipts of producer milk and fluid milk products from other pool plants.

(6) Subtract from the pounds of skim milk remaining in all classes other than Class I, in sequence beginning with Class IV, the pounds of skim milk in receipts of bulk fluid milk products from a handler regulated under another Federal order that are in excess of bulk fluid milk products transferred or diverted to such handler, if other than Class I classification is requested, but not in excess of the pounds of skim milk remaining in these classes combined.

(7) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class IV, the pounds of skim milk in fluid milk products and bulk fluid cream products in inventory at the beginning of the month that were not previously subtracted in this section.

(8) Subtract from the pounds of skim milk remaining in each class at the plant receipts of skim milk in fluid milk products from an unregulated supply plant that were not previously subtracted in this section and that were not offset by transfers or diversions of fluid milk products to the unregulated supply plant from which fluid milk products to be allocated at this step were received. Such subtraction shall be pro rata to the pounds of skim milk in Class I and in Classes II, III, and IV combined, with the quantity prorated to Classes II, III, and IV combined being subtracted in sequence beginning with Class IV.

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from a handler regulated under another Federal order that are in excess of bulk fluid milk products transferred or diverted to such handler that were not subtracted in paragraph (a)(6) of this section. Such subtraction shall be pro rata to the pounds of skim milk in Class I and in Classes II, III, and IV combined, with the quantity prorated to Classes II, III, and IV combined being subtracted in sequence beginning with Class IV, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(i) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1000.45(a); or

(ii) The total pounds of skim milk remaining in each class at this allocation step.

(10) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant and from a handler described in § 1135.11 of this chapter according to the classification of such products pursuant to § 1000.42(a).

(11) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class IV.

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section.

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraphs (a) and (b) of this section.

§ 1000.45 Market administrator's reports and announcements concerning classification.

(a) Whenever required for the purpose of allocating receipts from plants regulated under other Federal orders pursuant to § 1000.44(a)(9) and the corresponding step of § 1000.44(b), the market administrator shall estimate and publicly announce the utilization (to the nearest whole percentage) in Class I during the month of skim milk and butterfat, respectively, in producer milk of all handlers. The estimate shall be based upon the most current available data and shall be final for such purpose.

(b) The market administrator shall report to the market administrators of other Federal orders as soon as possible after the handlers' reports of receipts and utilization are received, the class to which receipts from plants regulated under other Federal orders are allocated pursuant to §§ 1000.43(d) and 1000.44 (including any reclassification of inventories of bulk concentrated fluid milk products), and thereafter any change in allocation required to correct errors disclosed on the verification of such report.

(c) The market administrator shall furnish each handler operating a pool plant and each handler described in § 1135.11 of this chapter who has shipped fluid milk products or bulk fluid cream products to a plant fully regulated under another Federal order the class to which the shipments were allocated by the market administrator of the other Federal order on the basis of the report by the receiving handler and, as necessary, any changes in the allocation arising from the verification of such report.

(d) The market administrator shall report to each cooperative association which so requests, the percentage of producer milk delivered by members of the association that was used in each class by each handler receiving the milk. For the purpose of this report, the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by the handler.

Subpart G—Class Prices

§ 1000.50 Class prices, component prices, and advanced pricing factors.

Class prices per hundredweight of milk containing 3.5 percent butterfat, component prices, and advanced pricing factors shall be as follows. The prices and pricing factors described in paragraphs (a), (b), (c), (e), (f), and (q) of this section shall be based on a weighted average of the most recent 2 weekly prices announced by the National Agricultural Statistical Service (NASS) before the 24th day of the month. These prices shall be announced on or before the 23rd day of the month and shall apply to milk received during the following month. The prices described in paragraphs (g) through (p) of this section shall be based on a weighted average for the preceding month of weekly prices announced by NASS on or before the 5th day of the month and shall apply to milk received during the preceding month. The price described in paragraph (d) of this section shall be derived from the Class II skim milk price announced on or before the 23rd day of the month preceding the month to which it applies and the butterfat price announced on or before the 5th day of the month following the month to which it applies.

(a) *Class I price.* The Class I price per hundredweight, rounded to the nearest cent, shall be .965 times the Class I skim milk price plus 3.5 times the Class I butterfat price.

(b) *Class I skim milk price.* The Class I skim milk price per hundredweight shall be the adjusted Class I differential

specified in § 1000.52 plus the higher of the advanced pricing factors computed in paragraph (q)(1) or (2) of this section.

(c) *Class I butterfat price.* The Class I butterfat price per pound shall be the adjusted Class I differential specified in § 1000.52 divided by 100, plus the advanced butterfat price computed in paragraph (q)(3) of this section.

(d) *The Class II price* per hundredweight, rounded to the nearest cent, shall be .965 times the Class II skim milk price plus 3.5 times the Class II butterfat price.

(e) *Class II skim milk price.* The Class II skim milk price per hundredweight shall be the advanced Class IV skim milk price computed in paragraph (q)(2) of this section plus 70 cents.

(f) *Class II nonfat solids price.* The Class II nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the Class II skim milk price divided by 9.

(g) *Class II butterfat price.* The Class II butterfat price per pound shall be the butterfat price plus $.007.

(h) *Class III price.* The Class III price per hundredweight, rounded to the nearest cent, shall be .965 times the Class III skim milk price plus 3.5 times the butterfat price.

(i) *Class III skim milk price.* The Class III skim milk price per hundredweight, rounded to the nearest cent, shall be the protein price per pound times 3.1 plus the other solids price per pound times 5.9.

(j) *Class IV price.* The Class IV price per hundredweight, rounded to the nearest cent, shall be .965 times the Class IV skim milk price plus 3.5 times the butterfat price.

(k) *Class IV skim milk price.* The Class IV skim milk price per hundredweight, rounded to the nearest cent, shall be the nonfat solids price per pound times 9.

(l) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA Butter survey price reported by the Department for the month less 11.4 cents, with the result divided by 0.82.

(m) *Nonfat solids price.* The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month less 13.7 cents, with the result divided by 1.02.

(n) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be computed as follows:

(1) Compute a weighted average of the amounts described in paragraphs (n)(1)(i) and (ii) of this section:

(i) The U.S. average NASS survey price for 40-lb. block cheese reported by the Department for the month; and

(ii) The U.S. average NASS survey price for 500-pound barrel cheddar cheese (39 percent moisture) reported by the Department for the month plus 3 cents;

(2) Subtract 17.02 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.405;

(3) Add to the amount computed pursuant to paragraph (n)(2) of this section an amount computed as follows:

(i) Subtract 17.02 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.582;

(ii) Subtract the butterfat price computed pursuant to paragraph (l) of this section from the amount computed pursuant to paragraph (n)(3)(i) of this section; and

(iii) Multiply the amount computed pursuant to paragraph (n)(3)(ii) of this section by 1.28.

(o) *Other solids price.* The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month minus 13.7 cents, with the result divided by 0.968.

(p) *Somatic cell adjustment.* The somatic cell adjustment per hundredweight of milk shall be determined as follows:

(1) Multiply .0005 by the weighted average price computed pursuant to paragraph (n)(1) of this section and round to the 5th decimal place;

(2) Subtract the somatic cell count of the milk (reported in thousands) from 350; and

(3) Multiply the amount computed in paragraph (p)(1) of this section by the amount computed in paragraph (p)(2) of this section and round to the nearest full cent.

(q) *Advanced pricing factors.* For the purpose of computing the Class I skim milk price, the Class II skim milk price, the Class II nonfat solids price, and the Class I butterfat price for the following month, the following pricing factors shall be computed using the weighted average of the 2 most recent NASS U.S. average weekly survey prices announced before the 24th day of the month:

(1) An advanced Class III skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(i) Following the procedure set forth in paragraphs (n) and (o) of this section, but using the weighted average of the 2 most recent NASS U.S. average weekly survey prices announced before the 24th day of the month, compute a protein price and an other solids price;

(ii) Multiply the protein price computed in paragraph (q)(1)(i) of this section by 3.1;

(iii) Multiply the other solids price per pound computed in paragraph (q)(1)(i) of this section by 5.9; and

(iv) Add the amounts computed in paragraphs (q)(1)(ii) and (iii) of this section.

(2) An advanced Class IV skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(i) Following the procedure set forth in paragraph (m) of this section, but using the weighted average of the 2 most recent NASS U.S. average weekly survey prices announced before the 24th day of the month, compute a nonfat solids price; and

(ii) Multiply the nonfat solids price computed in paragraph (q)(2)(i) of this section by 9.

(3) An advanced butterfat price per pound, rounded to the nearest one-hundredth cent, shall be calculated by computing a weighted average of the 2 most recent U.S. average NASS AA Butter survey prices announced before the 24th day of the month, subtracting 11.4 cents from this average, and dividing the result by 0.82.

§ 1000.51 [Reserved]

§ 1000.52 Adjusted Class I differentials.

The Class I differential adjusted for location to be used in § 1000.50(b) and (c) shall be as follows:

County/Parish/City	State	Fips__code	Class I differential adjusted for location
AUTAUGA	AL	01001	2.90
BALDWIN	AL	01003	3.30
BARBOUR	AL	01005	3.20
BIBB	AL	01007	2.70

County/Parish/City	State	Fips__code	Class I differential adjusted for location
BLOUNT	AL	01009	2.55
BULLOCK	AL	01011	3.10
BUTLER	AL	01013	3.20
CALHOUN	AL	01015	2.70
CHAMBERS	AL	01017	2.90
CHEROKEE	AL	01019	2.55
CHILTON	AL	01021	2.70
CHOCTAW	AL	01023	3.10
CLARKE	AL	01025	3.10
CLAY	AL	01027	2.80
CLEBURNE	AL	01029	2.70
COFFEE	AL	01031	3.20
COLBERT	AL	01033	2.25
CONECUH	AL	01035	3.20
COOSA	AL	01037	2.80
COVINGTON	AL	01039	3.20
CRENSHAW	AL	01041	3.20
CULLMAN	AL	01043	2.55
DALE	AL	01045	3.20
DALLAS	AL	01047	2.90
DE KALB	AL	01049	2.25
ELMORE	AL	01051	2.90
ESCAMBIA	AL	01053	3.30
ETOWAH	AL	01055	2.55
FAYETTE	AL	01057	2.70
FRANKLIN	AL	01059	2.25
GENEVA	AL	01061	3.30
GREENE	AL	01063	2.70
HALE	AL	01065	2.70
HENRY	AL	01067	3.20
HOUSTON	AL	01069	3.30
JACKSON	AL	01071	2.25
JEFFERSON	AL	01073	2.70
LAMAR	AL	01075	2.70
LAUDERDALE	AL	01077	2.20
LAWRENCE	AL	01079	2.25
LEE	AL	01081	2.90
LIMESTONE	AL	01083	2.25
LOWNDES	AL	01085	3.10
MACON	AL	01087	3.10
MADISON	AL	01089	2.25
MARENGO	AL	01091	3.10
MARION	AL	01093	2.55
MARSHALL	AL	01095	2.25
MOBILE	AL	01097	3.30
MONROE	AL	01099	3.20
MONTGOMERY	AL	01101	3.10
MORGAN	AL	01103	2.25
PERRY	AL	01105	2.70
PICKENS	AL	01107	2.70
PIKE	AL	01109	3.20
RANDOLPH	AL	01111	2.80
RUSSELL	AL	01113	3.10
ST. CLAIR	AL	01115	2.70
SHELBY	AL	01117	2.70
SUMTER	AL	01119	2.70
TALLADEGA	AL	01121	2.70
TALLAPOOSA	AL	01123	2.90
TUSCALOOSA	AL	01125	2.70
WALKER	AL	01127	2.70
WASHINGTON	AL	01129	3.10
WILCOX	AL	01131	3.10
WINSTON	AL	01133	2.55
APACHE	AZ	04001	1.90
COCHISE	AZ	04003	1.60
COCONINO	AZ	04005	1.90
GILA	AZ	04007	1.60
GRAHAM	AZ	04009	1.60
GREENLEE	AZ	04011	1.60
LA PAZ	AZ	04012	1.60
MARICOPA	AZ	04013	1.55

County/Parish/City	State	Fips__code	Class I differential adjusted for location
MOHAVE	AZ	04015	1.90
NAVAJO	AZ	04017	1.90
PIMA	AZ	04019	1.60
PINAL	AZ	04021	1.55
SANTA CRUZ	AZ	04023	1.60
YAVAPAI	AZ	04025	1.60
YUMA	AZ	04027	1.60
ARKANSAS	AR	05001	2.65
ASHLEY	AR	05003	2.75
BAXTER	AR	05005	1.90
BENTON	AR	05007	1.70
BOONE	AR	05009	1.70
BRADLEY	AR	05011	2.65
CALHOUN	AR	05013	2.65
CARROLL	AR	05015	1.70
CHICOT	AR	05017	2.75
CLARK	AR	05019	2.35
CLAY	AR	05021	2.35
CLEBURNE	AR	05023	2.10
CLEVELAND	AR	05025	2.65
COLUMBIA	AR	05027	2.35
CONWAY	AR	05029	2.10
CRAIGHEAD	AR	05031	2.65
CRAWFORD	AR	05033	1.90
CRITTENDEN	AR	05035	2.65
CROSS	AR	05037	2.65
DALLAS	AR	05039	2.35
DESHA	AR	05041	2.75
DREW	AR	05043	2.75
FAULKNER	AR	05045	2.35
FRANKLIN	AR	05047	1.90
FULTON	AR	05049	2.10
GARLAND	AR	05051	2.10
GRANT	AR	05053	2.35
GREENE	AR	05055	2.35
HEMPSTEAD	AR	05057	2.10
HOT SPRING	AR	05059	2.35
HOWARD	AR	05061	2.10
INDEPENDENCE	AR	05063	2.35
IZARD	AR	05065	2.10
JACKSON	AR	05067	2.35
JEFFERSON	AR	05069	2.65
JOHNSON	AR	05071	1.90
LAFAYETTE	AR	05073	2.35
LAWRENCE	AR	05075	2.35
LEE	AR	05077	2.65
LINCOLN	AR	05079	2.65
LITTLE RIVER	AR	05081	2.10
LOGAN	AR	05083	1.90
LONOKE	AR	05085	2.35
MADISON	AR	05087	1.70
MARION	AR	05089	1.90
MILLER	AR	05091	2.10
MISSISSIPPI	AR	05093	2.65
MONROE	AR	05095	2.65
MONTGOMERY	AR	05097	2.10
NEVADA	AR	05099	2.35
NEWTON	AR	05101	1.90
OUACHITA	AR	05103	2.35
PERRY	AR	05105	2.10
PHILLIPS	AR	05107	2.65
PIKE	AR	05109	2.10
POINSETT	AR	05111	2.65
POLK	AR	05113	2.10
POPE	AR	05115	1.90
PRAIRIE	AR	05117	2.65
PULASKI	AR	05119	2.35
RANDOLPH	AR	05121	2.10
ST. FRANCIS	AR	05123	2.65
SALINE	AR	05125	2.35
SCOTT	AR	05127	1.90

County/Parish/City	State	Fips__code	Class I differential adjusted for location
SEARCY	AR	05129	1.90
SEBASTIAN	AR	05131	1.90
SEVIER	AR	05133	2.10
SHARP	AR	05135	2.10
STONE	AR	05137	2.10
UNION	AR	05139	2.65
VAN BUREN	AR	05141	2.10
WASHINGTON	AR	05143	1.70
WHITE	AR	05145	2.35
WOODRUFF	AR	05147	2.65
YELL	AR	05149	2.10
ALAMEDA	CA	06001	1.75
ALPINE	CA	06003	1.20
AMADOR	CA	06005	1.20
BUTTE	CA	06007	1.65
CALAVERAS	CA	06009	1.20
COLUSA	CA	06011	1.80
CONTRA COSTA	CA	06013	1.75
DEL NORTE	CA	06015	1.80
EL DORADO	CA	06017	1.20
FRESNO	CA	06019	1.40
GLENN	CA	06021	1.80
HUMBOLDT	CA	06023	1.80
IMPERIAL	CA	06025	1.60
INYO	CA	06027	1.50
KERN	CA	06029	1.60
KINGS	CA	06031	1.40
LAKE	CA	06033	1.80
LASSEN	CA	06035	1.65
LOS ANGELES	CA	06037	1.60
MADERA	CA	06039	1.40
MARIN	CA	06041	1.80
MARIPOSA	CA	06043	1.20
MENDOCINO	CA	06045	1.80
MERCED	CA	06047	1.40
MODOC	CA	06049	1.65
MONO	CA	06051	1.20
MONTEREY	CA	06053	2.20
NAPA	CA	06055	1.80
NEVADA	CA	06057	1.40
ORANGE	CA	06059	1.60
PLACER	CA	06061	1.40
PLUMAS	CA	06063	1.65
RIVERSIDE	CA	06065	1.60
SACRAMENTO	CA	06067	1.40
SAN BENITO	CA	06069	1.75
SAN BERNARDINO	CA	06071	1.60
SAN DIEGO	CA	06073	1.80
SAN FRANCISCO	CA	06075	1.75
SAN JOAQUIN	CA	06077	1.40
SAN LUIS OBISPO	CA	06079	2.20
SAN MATEO	CA	06081	1.75
SANTA BARBARA	CA	06083	2.20
SANTA CLARA	CA	06085	1.75
SANTA CRUZ	CA	06087	1.75
SHASTA	CA	06089	1.80
SIERRA	CA	06091	1.40
SISKIYOU	CA	06093	1.80
SOLANO	CA	06095	1.65
SONOMA	CA	06097	1.80
STANISLAUS	CA	06099	1.40
SUTTER	CA	06101	1.65
TEHAMA	CA	06103	1.80
TRINITY	CA	06105	1.80
TULARE	CA	06107	1.40
TUOLUMNE	CA	06109	1.20
VENTURA	CA	06111	2.20
YOLO	CA	06113	1.65
YUBA	CA	06115	1.65
ADAMS	CO	08001	1.55
ALAMOSA	CO	08003	1.90

County/Parish/City	State	Fips__code	Class I differential adjusted for location
ARAPAHOE	CO	08005	1.55
ARCHULETA	CO	08007	2.20
BACA	CO	08009	1.90
BENT	CO	08011	1.80
BOULDER	CO	08013	1.55
CHAFFEE	CO	08015	1.90
CHEYENNE	CO	08017	1.60
CLEAR CREEK	CO	08019	1.55
CONEJOS	CO	08021	1.90
COSTILLA	CO	08023	1.90
CROWLEY	CO	08025	1.80
CUSTER	CO	08027	1.90
DELTA	CO	08029	2.20
DENVER	CO	08031	1.55
DOLORES	CO	08033	2.20
DOUGLAS	CO	08035	1.55
EAGLE	CO	08037	1.80
ELBERT	CO	08039	1.55
EL PASO	CO	08041	1.80
FREMONT	CO	08043	1.90
GARFIELD	CO	08045	1.90
GILPIN	CO	08047	1.55
GRAND	CO	08049	1.55
GUNNISON	CO	08051	1.90
HINSDALE	CO	08053	2.20
HUERFANO	CO	08055	1.90
JACKSON	CO	08057	1.55
JEFFERSON	CO	08059	1.55
KIOWA	CO	08061	1.80
KIT CARSON	CO	08063	1.60
LAKE	CO	08065	1.90
LA PLATA	CO	08067	2.20
LARIMER	CO	08069	1.55
LAS ANIMAS	CO	08071	1.90
LINCOLN	CO	08073	1.60
LOGAN	CO	08075	1.40
MESA	CO	08077	2.20
MINERAL	CO	08079	2.20
MOFFAT	CO	08081	1.80
MONTEZUMA	CO	08083	2.20
MONTROSE	CO	08085	2.20
MORGAN	CO	08087	1.40
OTERO	CO	08089	1.80
OURAY	CO	08091	2.20
PARK	CO	08093	1.80
PHILLIPS	CO	08095	1.50
PITKIN	CO	08097	1.90
PROWERS	CO	08099	1.80
PUEBLO	CO	08101	1.80
RIO BLANCO	CO	08103	1.90
RIO GRANDE	CO	08105	1.90
ROUTT	CO	08107	1.80
SAGUACHE	CO	08109	1.90
SAN JUAN	CO	08111	2.20
SAN MIGUEL	CO	08113	2.20
SEDGWICK	CO	08115	1.40
SUMMIT	CO	08117	1.80
TELLER	CO	08119	1.80
WASHINGTON	CO	08121	1.50
WELD	CO	08123	1.40
YUMA	CO	08125	1.50
FAIRFIELD	CT	09001	2.50
HARTFORD	CT	09003	2.50
LITCHFIELD	CT	09005	2.30
MIDDLESEX	CT	09007	2.50
NEW HAVEN	CT	09009	2.30
NEW LONDON	CT	09011	2.60
TOLLAND	CT	09013	2.50
WINDHAM	CT	09015	2.60
KENT	DE	10001	2.20
NEW CASTLE	DE	10003	2.20

County/Parish/City	State	Fips__code	Class I differential adjusted for location
SUSSEX	DE	10005	2.20
DISTRICT OF COLUMBIA	DC	11001	2.05
ALACHUA	FL	12001	4.00
BAKER	FL	12003	3.80
BAY	FL	12005	3.40
BRADFORD	FL	12007	3.80
BREVARD	FL	12009	4.20
BROWARD	FL	12011	4.75
CALHOUN	FL	12013	3.40
CHARLOTTE	FL	12015	4.40
CITRUS	FL	12017	4.00
CLAY	FL	12019	3.80
COLLIER	FL	12021	4.75
COLUMBIA	FL	12023	3.80
DADE	FL	12025	4.75
DE SOTO	FL	12027	4.40
DIXIE	FL	12029	3.80
DUVAL	FL	12031	3.80
ESCAMBIA	FL	12033	3.30
FLAGLER	FL	12035	4.00
FRANKLIN	FL	12037	3.40
GADSDEN	FL	12039	3.40
GILCHRIST	FL	12041	3.80
GLADES	FL	12043	4.40
GULF	FL	12045	3.40
HAMILTON	FL	12047	3.60
HARDEE	FL	12049	4.40
HENDRY	FL	12051	4.75
HERNANDO	FL	12053	4.20
HIGHLANDS	FL	12055	4.40
HILLSBOROUGH	FL	12057	4.20
HOLMES	FL	12059	3.30
INDIAN RIVER	FL	12061	4.40
JACKSON	FL	12063	3.30
JEFFERSON	FL	12065	3.50
LAFAYETTE	FL	12067	3.80
LAKE	FL	12069	4.20
LEE	FL	12071	4.75
LEON	FL	12073	3.50
LEVY	FL	12075	4.00
LIBERTY	FL	12077	3.40
MADISON	FL	12079	3.60
MANATEE	FL	12081	4.40
MARION	FL	12083	4.00
MARTIN	FL	12085	4.40
MONROE	FL	12087	4.75
NASSAU	FL	12089	3.80
OKALOOSA	FL	12091	3.30
OKEECHOBEE	FL	12093	4.40
ORANGE	FL	12095	4.20
OSCEOLA	FL	12097	4.20
PALM BEACH	FL	12099	4.75
PASCO	FL	12101	4.20
PINELLAS	FL	12103	4.20
POLK	FL	12105	4.20
PUTNAM	FL	12107	4.00
ST. JOHNS	FL	12109	3.80
ST. LUCIE	FL	12111	4.40
SANTA ROSA	FL	12113	3.30
SARASOTA	FL	12115	4.40
SEMINOLE	FL	12117	4.20
SUMTER	FL	12119	4.20
SUWANNEE	FL	12121	3.80
TAYLOR	FL	12123	3.60
UNION	FL	12125	3.80
VOLUSIA	FL	12127	4.20
WAKULLA	FL	12129	3.50
WALTON	FL	12131	3.30
WASHINGTON	FL	12133	3.40
APPLING	GA	13001	3.30
ATKINSON	GA	13003	3.30

County/Parish/City	State	Fips__code	Class I differential adjusted for location
BACON	GA	13005	3.30
BAKER	GA	13007	3.30
BALDWIN	GA	13009	2.80
BANKS	GA	13011	2.70
BARROW	GA	13013	2.90
BARTOW	GA	13015	2.70
BEN HILL	GA	13017	3.30
BERRIEN	GA	13019	3.30
BIBB	GA	13021	2.80
BLECKLEY	GA	13023	3.10
BRANTLEY	GA	13025	3.60
BROOKS	GA	13027	3.50
BRYAN	GA	13029	3.30
BULLOCH	GA	13031	3.20
BURKE	GA	13033	2.80
BUTTS	GA	13035	2.90
CALHOUN	GA	13037	3.20
CAMDEN	GA	13039	3.60
CANDLER	GA	13043	3.20
CARROLL	GA	13045	2.90
CATOOSA	GA	13047	2.55
CHARLTON	GA	13049	3.60
CHATHAM	GA	13051	3.30
CHATTAHOOCHEE	GA	13053	3.10
CHATTOOGA	GA	13055	2.55
CHEROKEE	GA	13057	2.70
CLARKE	GA	13059	2.80
CLAY	GA	13061	3.20
CLAYTON	GA	13063	2.90
CLINCH	GA	13065	3.60
COBB	GA	13067	2.90
COFFEE	GA	13069	3.30
COLQUITT	GA	13071	3.30
COLUMBIA	GA	13073	2.80
COOK	GA	13075	3.30
COWETA	GA	13077	2.90
CRAWFORD	GA	13079	2.90
CRISP	GA	13081	3.20
DADE	GA	13083	2.55
DAWSON	GA	13085	2.70
DECATUR	GA	13087	3.30
DE KALB	GA	13089	2.90
DODGE	GA	13091	3.20
DOOLY	GA	13093	3.20
DOUGHERTY	GA	13095	3.20
DOUGLAS	GA	13097	2.90
EARLY	GA	13099	3.30
ECHOLS	GA	13101	3.60
EFFINGHAM	GA	13103	3.20
ELBERT	GA	13105	2.80
EMANUEL	GA	13107	3.10
EVANS	GA	13109	3.20
FANNIN	GA	13111	2.55
FAYETTE	GA	13113	2.90
FLOYD	GA	13115	2.55
FORSYTH	GA	13117	2.90
FRANKLIN	GA	13119	2.70
FULTON	GA	13121	2.90
GILMER	GA	13123	2.55
GLASCOCK	GA	13125	2.80
GLYNN	GA	13127	3.60
GORDON	GA	13129	2.55
GRADY	GA	13131	3.30
GREENE	GA	13133	2.80
GWINNETT	GA	13135	2.90
HABERSHAM	GA	13137	2.70
HALL	GA	13139	2.90
HANCOCK	GA	13141	2.80
HARALSON	GA	13143	2.70
HARRIS	GA	13145	2.90
HART	GA	13147	2.70

County/Parish/City	State	Fips__code	Class I differential adjusted for location
HEARD	GA	13149	2.90
HENRY	GA	13151	2.90
HOUSTON	GA	13153	3.10
IRWIN	GA	13155	3.30
JACKSON	GA	13157	2.80
JASPER	GA	13159	2.80
JEFF DAVIS	GA	13161	3.30
JEFFERSON	GA	13163	2.80
JENKINS	GA	13165	3.10
JOHNSON	GA	13167	3.10
JONES	GA	13169	2.80
LAMAR	GA	13171	2.90
LANIER	GA	13173	3.60
LAURENS	GA	13175	3.10
LEE	GA	13177	3.20
LIBERTY	GA	13179	3.30
LINCOLN	GA	13181	2.80
LONG	GA	13183	3.30
LOWNDES	GA	13185	3.60
LUMPKIN	GA	13187	2.70
MCDUFFIE	GA	13189	2.80
MCINTOSH	GA	13191	3.30
MACON	GA	13193	3.10
MADISON	GA	13195	2.80
MARION	GA	13197	3.10
MERIWETHER	GA	13199	2.90
MILLER	GA	13201	3.30
MITCHELL	GA	13205	3.30
MONROE	GA	13207	2.90
MONTGOMERY	GA	13209	3.20
MORGAN	GA	13211	2.80
MURRAY	GA	13213	2.55
MUSCOGEE	GA	13215	3.10
NEWTON	GA	13217	2.80
OCONEE	GA	13219	2.80
OGLETHORPE	GA	13221	2.80
PAULDING	GA	13223	2.90
PEACH	GA	13225	2.90
PICKENS	GA	13227	2.70
PIERCE	GA	13229	3.30
PIKE	GA	13231	2.90
POLK	GA	13233	2.70
PULASKI	GA	13235	3.20
PUTNAM	GA	13237	2.80
QUITMAN	GA	13239	3.20
RABUN	GA	13241	2.55
RANDOLPH	GA	13243	3.20
RICHMOND	GA	13245	2.80
ROCKDALE	GA	13247	2.90
SCHLEY	GA	13249	3.10
SCREVEN	GA	13251	3.10
SEMINOLE	GA	13253	3.30
SPALDING	GA	13255	2.90
STEPHENS	GA	13257	2.70
STEWART	GA	13259	3.10
SUMTER	GA	13261	3.20
TALBOT	GA	13263	2.90
TALIAFERRO	GA	13265	2.80
TATTNALL	GA	13267	3.20
TAYLOR	GA	13269	2.90
TELFAIR	GA	13271	3.20
TERRELL	GA	13273	3.20
THOMAS	GA	13275	3.50
TIFT	GA	13277	3.30
TOOMBS	GA	13279	3.20
TOWNS	GA	13281	2.55
TREUTLEN	GA	13283	3.20
TROUP	GA	13285	2.90
TURNER	GA	13287	3.30
TWIGGS	GA	13289	2.80
UNION	GA	13291	2.55

County/Parish/City	State	Fips__code	Class I differential adjusted for location
UPSON	GA	13293	2.90
WALKER	GA	13295	2.55
WALTON	GA	13297	2.80
WARE	GA	13299	3.60
WARREN	GA	13301	2.80
WASHINGTON	GA	13303	2.80
WAYNE	GA	13305	3.30
WEBSTER	GA	13307	3.20
WHEELER	GA	13309	3.20
WHITE	GA	13311	2.70
WHITFIELD	GA	13313	2.55
WILCOX	GA	13315	3.20
WILKES	GA	13317	2.80
WILKINSON	GA	13319	2.80
WORTH	GA	13321	3.30
ADA	ID	16001	1.35
ADAMS	ID	16003	1.35
BANNOCK	ID	16005	1.40
BEAR LAKE	ID	16007	1.40
BENEWAH	ID	16009	1.35
BINGHAM	ID	16011	1.35
BLAINE	ID	16013	1.35
BOISE	ID	16015	1.35
BONNER	ID	16017	1.35
BONNEVILLE	ID	16019	1.35
BOUNDARY	ID	16021	1.35
BUTTE	ID	16023	1.35
CAMAS	ID	16025	1.35
CANYON	ID	16027	1.35
CARIBOU	ID	16029	1.40
CASSIA	ID	16031	1.40
CLARK	ID	16033	1.40
CLEARWATER	ID	16035	1.40
CUSTER	ID	16037	1.35
ELMORE	ID	16039	1.35
FRANKLIN	ID	16041	1.40
FREMONT	ID	16043	1.40
GEM	ID	16045	1.35
GOODING	ID	16047	1.35
IDAHO	ID	16049	1.40
JEFFERSON	ID	16051	1.35
JEROME	ID	16053	1.35
KOOTENAI	ID	16055	1.35
LATAH	ID	16057	1.35
LEMHI	ID	16059	1.40
LEWIS	ID	16061	1.35
LINCOLN	ID	16063	1.35
MADISON	ID	16065	1.40
MINIDOKA	ID	16067	1.35
NEZ PERCE	ID	16069	1.35
ONEIDA	ID	16071	1.40
OWYHEE	ID	16073	1.35
PAYETTE	ID	16075	1.35
POWER	ID	16077	1.40
SHOSHONE	ID	16079	1.40
TETON	ID	16081	1.40
TWIN FALLS	ID	16083	1.35
VALLEY	ID	16085	1.35
WASHINGTON	ID	16087	1.35
ADAMS	IL	17001	2.00
ALEXANDER	IL	17003	2.10
BOND	IL	17005	2.00
BOONE	IL	17007	1.95
BROWN	IL	17009	2.00
BUREAU	IL	17011	2.00
CALHOUN	IL	17013	2.00
CARROLL	IL	17015	1.95
CASS	IL	17017	2.00
CHAMPAIGN	IL	17019	2.00
CHRISTIAN	IL	17021	2.00
CLARK	IL	17023	2.00

County/Parish/City	State	Fips__code	Class I differential adjusted for location
CLAY	IL	17025	2.00
CLINTON	IL	17027	2.00
COLES	IL	17029	2.00
COOK	IL	17031	1.95
CRAWFORD	IL	17033	2.00
CUMBERLAND	IL	17035	2.00
DE KALB	IL	17037	1.95
DE WITT	IL	17039	2.00
DOUGLAS	IL	17041	2.00
DU PAGE	IL	17043	1.95
EDGAR	IL	17045	2.00
EDWARDS	IL	17047	2.00
EFFINGHAM	IL	17049	2.00
FAYETTE	IL	17051	2.00
FORD	IL	17053	2.00
FRANKLIN	IL	17055	2.10
FULTON	IL	17057	2.00
GALLATIN	IL	17059	2.10
GREENE	IL	17061	2.00
GRUNDY	IL	17063	2.00
HAMILTON	IL	17065	2.10
HANCOCK	IL	17067	2.00
HARDIN	IL	17069	2.10
HENDERSON	IL	17071	2.00
HENRY	IL	17073	2.00
IROQUOIS	IL	17075	2.00
JACKSON	IL	17077	2.10
JASPER	IL	17079	2.00
JEFFERSON	IL	17081	2.00
JERSEY	IL	17083	2.00
JO DAVIESS	IL	17085	1.95
JOHNSON	IL	17087	2.10
KANE	IL	17089	1.95
KANKAKEE	IL	17091	2.00
KENDALL	IL	17093	2.00
KNOX	IL	17095	2.00
LAKE	IL	17097	1.95
LA SALLE	IL	17099	2.00
LAWRENCE	IL	17101	2.00
LEE	IL	17103	1.95
LIVINGSTON	IL	17105	2.00
LOGAN	IL	17107	2.00
MCDONOUGH	IL	17109	2.00
MCHENRY	IL	17111	1.95
MCLEAN	IL	17113	2.00
MACON	IL	17115	2.00
MACOUPIN	IL	17117	2.00
MADISON	IL	17119	2.00
MARION	IL	17121	2.00
MARSHALL	IL	17123	2.00
MASON	IL	17125	2.00
MASSAC	IL	17127	2.10
MENARD	IL	17129	2.00
MERCER	IL	17131	2.00
MONROE	IL	17133	2.10
MONTGOMERY	IL	17135	2.00
MORGAN	IL	17137	2.00
MOULTRIE	IL	17139	2.00
OGLE	IL	17141	1.95
PEORIA	IL	17143	2.00
PERRY	IL	17145	2.10
PIATT	IL	17147	2.00
PIKE	IL	17149	2.00
POPE	IL	17151	2.10
PULASKI	IL	17153	2.10
PUTNAM	IL	17155	2.00
RANDOLPH	IL	17157	2.10
RICHLAND	IL	17159	2.00
ROCK ISLAND	IL	17161	2.00
ST. CLAIR	IL	17163	2.10
SALINE	IL	17165	2.10

County/Parish/City	State	Fips__code	Class I differential adjusted for location
SANGAMON	IL	17167	2.00
SCHUYLER	IL	17169	2.00
SCOTT	IL	17171	2.00
SHELBY	IL	17173	2.00
STARK	IL	17175	2.00
STEPHENSON	IL	17177	1.95
TAZEWELL	IL	17179	2.00
UNION	IL	17181	2.10
VERMILION	IL	17183	2.00
WABASH	IL	17185	2.00
WARREN	IL	17187	2.00
WASHINGTON	IL	17189	2.10
WAYNE	IL	17191	2.00
WHITE	IL	17193	2.00
WHITESIDE	IL	17195	1.95
WILL	IL	17197	2.00
WILLIAMSON	IL	17199	2.10
WINNEBAGO	IL	17201	1.95
WOODFORD	IL	17203	2.00
ADAMS	IN	18001	2.00
ALLEN	IN	18003	1.80
BARTHOLOMEW	IN	18005	2.05
BENTON	IN	18007	2.00
BLACKFORD	IN	18009	2.00
BOONE	IN	18011	2.00
BROWN	IN	18013	2.05
CARROLL	IN	18015	2.00
CASS	IN	18017	2.00
CLARK	IN	18019	1.95
CLAY	IN	18021	2.00
CLINTON	IN	18023	2.00
CRAWFORD	IN	18025	2.10
DAVIESS	IN	18027	2.05
DEARBORN	IN	18029	1.95
DECATUR	IN	18031	1.95
DE KALB	IN	18033	1.80
DELAWARE	IN	18035	2.00
DUBOIS	IN	18037	2.10
ELKHART	IN	18039	1.80
FAYETTE	IN	18041	2.00
FLOYD	IN	18043	1.95
FOUNTAIN	IN	18045	2.00
FRANKLIN	IN	18047	1.95
FULTON	IN	18049	2.00
GIBSON	IN	18051	2.10
GRANT	IN	18053	2.00
GREENE	IN	18055	2.05
HAMILTON	IN	18057	2.00
HANCOCK	IN	18059	2.00
HARRISON	IN	18061	1.95
HENDRICKS	IN	18063	2.00
HENRY	IN	18065	2.00
HOWARD	IN	18067	2.00
HUNTINGTON	IN	18069	2.00
JACKSON	IN	18071	2.05
JASPER	IN	18073	2.00
JAY	IN	18075	2.00
JEFFERSON	IN	18077	1.95
JENNINGS	IN	18079	1.95
JOHNSON	IN	18081	2.00
KNOX	IN	18083	2.05
KOSCIUSKO	IN	18085	1.80
LAGRANGE	IN	18087	1.80
LAKE	IN	18089	1.95
LA PORTE	IN	18091	1.80
LAWRENCE	IN	18093	2.05
MADISON	IN	18095	2.00
MARION	IN	18097	2.00
MARSHALL	IN	18099	1.80
MARTIN	IN	18101	2.05
MIAMI	IN	18103	2.00

County/Parish/City	State	Fips__code	Class I differential adjusted for location
MONROE	IN	18105	2.05
MONTGOMERY	IN	18107	2.00
MORGAN	IN	18109	2.00
NEWTON	IN	18111	2.00
NOBLE	IN	18113	1.80
OHIO	IN	18115	1.95
ORANGE	IN	18117	2.05
OWEN	IN	18119	2.00
PARKE	IN	18121	2.00
PERRY	IN	18123	2.10
PIKE	IN	18125	2.10
PORTER	IN	18127	1.95
POSEY	IN	18129	2.10
PULASKI	IN	18131	2.00
PUTNAM	IN	18133	2.00
RANDOLPH	IN	18135	2.00
RIPLEY	IN	18137	1.95
RUSH	IN	18139	2.00
ST. JOSEPH	IN	18141	1.80
SCOTT	IN	18143	1.95
SHELBY	IN	18145	2.00
SPENCER	IN	18147	2.10
STARKE	IN	18149	1.80
STEUBEN	IN	18151	1.80
SULLIVAN	IN	18153	2.05
SWITZERLAND	IN	18155	1.95
TIPPECANOE	IN	18157	2.00
TIPTON	IN	18159	2.00
UNION	IN	18161	2.00
VANDERBURGH	IN	18163	2.10
VERMILLION	IN	18165	2.00
VIGO	IN	18167	2.00
WABASH	IN	18169	2.00
WARREN	IN	18171	2.00
WARRICK	IN	18173	2.10
WASHINGTON	IN	18175	1.95
WAYNE	IN	18177	2.00
WELLS	IN	18179	2.00
WHITE	IN	18181	2.00
WHITLEY	IN	18183	1.80
ADAIR	IA	19001	1.90
ADAMS	IA	19003	1.90
ALLAMAKEE	IA	19005	1.70
APPANOOSE	IA	19007	1.90
AUDUBON	IA	19009	1.90
BENTON	IA	19011	1.95
BLACK HAWK	IA	19013	1.80
BOONE	IA	19015	1.90
BREMER	IA	19017	1.80
BUCHANAN	IA	19019	1.80
BUENA VISTA	IA	19021	1.80
BUTLER	IA	19023	1.80
CALHOUN	IA	19025	1.80
CARROLL	IA	19027	1.90
CASS	IA	19029	1.90
CEDAR	IA	19031	1.95
CERRO GORDO	IA	19033	1.70
CHEROKEE	IA	19035	1.80
CHICKASAW	IA	19037	1.70
CLARKE	IA	19039	1.90
CLAY	IA	19041	1.70
CLAYTON	IA	19043	1.70
CLINTON	IA	19045	1.95
CRAWFORD	IA	19047	1.90
DALLAS	IA	19049	1.90
DAVIS	IA	19051	1.90
DECATUR	IA	19053	1.90
DELAWARE	IA	19055	1.80
DES MOINES	IA	19057	1.90
DICKINSON	IA	19059	1.70
DUBUQUE	IA	19061	1.80

County/Parish/City	State	Fips__code	Class I differential adjusted for location
EMMET	IA	19063	1.70
FAYETTE	IA	19065	1.70
FLOYD	IA	19067	1.70
FRANKLIN	IA	19069	1.80
FREMONT	IA	19071	1.90
GREENE	IA	19073	1.90
GRUNDY	IA	19075	1.80
GUTHRIE	IA	19077	1.90
HAMILTON	IA	19079	1.80
HANCOCK	IA	19081	1.70
HARDIN	IA	19083	1.80
HARRISON	IA	19085	1.90
HENRY	IA	19087	1.90
HOWARD	IA	19089	1.70
HUMBOLDT	IA	19091	1.80
IDA	IA	19093	1.80
IOWA	IA	19095	1.95
JACKSON	IA	19097	1.95
JASPER	IA	19099	1.95
JEFFERSON	IA	19101	1.90
JOHNSON	IA	19103	1.95
JONES	IA	19105	1.95
KEOKUK	IA	19107	1.90
KOSSUTH	IA	19109	1.70
LEE	IA	19111	1.90
LINN	IA	19113	1.95
LOUISA	IA	19115	1.90
LUCAS	IA	19117	1.90
LYON	IA	19119	1.70
MADISON	IA	19121	1.90
MAHASKA	IA	19123	1.90
MARION	IA	19125	1.90
MARSHALL	IA	19127	1.95
MILLS	IA	19129	1.90
MITCHELL	IA	19131	1.70
MONONA	IA	19133	1.80
MONROE	IA	19135	1.90
MONTGOMERY	IA	19137	1.90
MUSCATINE	IA	19139	1.90
O'BRIEN	IA	19141	1.70
OSCEOLA	IA	19143	1.70
PAGE	IA	19145	1.90
PALO ALTO	IA	19147	1.70
PLYMOUTH	IA	19149	1.70
POCAHONTAS	IA	19151	1.80
POLK	IA	19153	1.90
POTTAWATTAMIE	IA	19155	1.90
POWESHIEK	IA	19157	1.95
RINGGOLD	IA	19159	1.90
SAC	IA	19161	1.80
SCOTT	IA	19163	1.95
SHELBY	IA	19165	1.90
SIOUX	IA	19167	1.70
STORY	IA	19169	1.95
TAMA	IA	19171	1.95
TAYLOR	IA	19173	1.90
UNION	IA	19175	1.90
VAN BUREN	IA	19177	1.90
WAPELLO	IA	19179	1.90
WARREN	IA	19181	1.90
WASHINGTON	IA	19183	1.90
WAYNE	IA	19185	1.90
WEBSTER	IA	19187	1.80
WINNEBAGO	IA	19189	1.70
WINNESHIEK	IA	19191	1.70
WOODBURY	IA	19193	1.80
WORTH	IA	19195	1.70
WRIGHT	IA	19197	1.80
ALLEN	KS	20001	1.70
ANDERSON	KS	20003	1.70
ATCHISON	KS	20005	1.90

County/Parish/City	State	Fips__code	Class I differential adjusted for location
BARBER	KS	20007	1.90
BARTON	KS	20009	1.90
BOURBON	KS	20011	1.70
BROWN	KS	20013	1.90
BUTLER	KS	20015	1.70
CHASE	KS	20017	1.70
CHAUTAUQUA	KS	20019	1.70
CHEROKEE	KS	20021	1.70
CHEYENNE	KS	20023	1.60
CLARK	KS	20025	1.90
CLAY	KS	20027	1.90
CLOUD	KS	20029	1.80
COFFEY	KS	20031	1.70
COMANCHE	KS	20033	1.90
COWLEY	KS	20035	1.70
CRAWFORD	KS	20037	1.70
DECATUR	KS	20039	1.60
DICKINSON	KS	20041	1.90
DONIPHAN	KS	20043	1.90
DOUGLAS	KS	20045	1.70
EDWARDS	KS	20047	1.90
ELK	KS	20049	1.70
ELLIS	KS	20051	1.80
ELLSWORTH	KS	20053	1.90
FINNEY	KS	20055	1.80
FORD	KS	20057	1.90
FRANKLIN	KS	20059	1.70
GEARY	KS	20061	1.90
GOVE	KS	20063	1.60
GRAHAM	KS	20065	1.60
GRANT	KS	20067	1.90
GRAY	KS	20069	1.90
GREELEY	KS	20071	1.80
GREENWOOD	KS	20073	1.70
HAMILTON	KS	20075	1.80
HARPER	KS	20077	1.70
HARVEY	KS	20079	1.70
HASKELL	KS	20081	1.90
HODGEMAN	KS	20083	1.80
JACKSON	KS	20085	1.90
JEFFERSON	KS	20087	1.90
JEWELL	KS	20089	1.80
JOHNSON	KS	20091	1.90
KEARNY	KS	20093	1.80
KINGMAN	KS	20095	1.70
KIOWA	KS	20097	1.90
LABETTE	KS	20099	1.70
LANE	KS	20101	1.80
LEAVENWORTH	KS	20103	1.90
LINCOLN	KS	20105	1.80
LINN	KS	20107	1.70
LOGAN	KS	20109	1.60
LYON	KS	20111	1.70
MCPHERSON	KS	20113	1.90
MARION	KS	20115	1.70
MARSHALL	KS	20117	1.90
MEADE	KS	20119	1.90
MIAMI	KS	20121	1.70
MITCHELL	KS	20123	1.80
MONTGOMERY	KS	20125	1.70
MORRIS	KS	20127	1.90
MORTON	KS	20129	1.90
NEMAHA	KS	20131	1.90
NEOSHO	KS	20133	1.70
NESS	KS	20135	1.80
NORTON	KS	20137	1.60
OSAGE	KS	20139	1.70
OSBORNE	KS	20141	1.80
OTTAWA	KS	20143	1.90
PAWNEE	KS	20145	1.90
PHILLIPS	KS	20147	1.60

County/Parish/City	State	Fips__code	Class I differential adjusted for location
POTTAWATOMIE	KS	20149	1.90
PRATT	KS	20151	1.90
RAWLINS	KS	20153	1.60
RENO	KS	20155	1.70
REPUBLIC	KS	20157	1.80
RICE	KS	20159	1.90
RILEY	KS	20161	1.90
ROOKS	KS	20163	1.60
RUSH	KS	20165	1.80
RUSSELL	KS	20167	1.80
SALINE	KS	20169	1.90
SCOTT	KS	20171	1.80
SEDGWICK	KS	20173	1.70
SEWARD	KS	20175	1.90
SHAWNEE	KS	20177	1.90
SHERIDAN	KS	20179	1.60
SHERMAN	KS	20181	1.60
SMITH	KS	20183	1.60
STAFFORD	KS	20185	1.90
STANTON	KS	20187	1.90
STEVENS	KS	20189	1.90
SUMNER	KS	20191	1.70
THOMAS	KS	20193	1.60
TREGO	KS	20195	1.80
WABAUNSEE	KS	20197	1.90
WALLACE	KS	20199	1.60
WASHINGTON	KS	20201	1.90
WICHITA	KS	20203	1.80
WILSON	KS	20205	1.70
WOODSON	KS	20207	1.70
WYANDOTTE	KS	20209	1.90
ADAIR	KY	21001	1.95
ALLEN	KY	21003	2.05
ANDERSON	KY	21005	1.95
BALLARD	KY	21007	2.30
BARREN	KY	21009	2.05
BATH	KY	21011	2.05
BELL	KY	21013	2.15
BOONE	KY	21015	1.95
BOURBON	KY	21017	2.05
BOYD	KY	21019	2.20
BOYLE	KY	21021	1.95
BRACKEN	KY	21023	2.05
BREATHITT	KY	21025	2.15
BRECKINRIDGE	KY	21027	2.10
BULLITT	KY	21029	1.95
BUTLER	KY	21031	2.20
CALDWELL	KY	21033	2.30
CALLOWAY	KY	21035	2.30
CAMPBELL	KY	21037	2.05
CARLISLE	KY	21039	2.30
CARROLL	KY	21041	1.95
CARTER	KY	21043	2.20
CASEY	KY	21045	1.95
CHRISTIAN	KY	21047	2.20
CLARK	KY	21049	2.05
CLAY	KY	21051	2.15
CLINTON	KY	21053	2.15
CRITTENDEN	KY	21055	2.30
CUMBERLAND	KY	21057	2.05
DAVIESS	KY	21059	2.10
EDMONSON	KY	21061	2.05
ELLIOTT	KY	21063	2.05
ESTILL	KY	21065	2.05
FAYETTE	KY	21067	2.05
FLEMING	KY	21069	2.05
FLOYD	KY	21071	2.15
FRANKLIN	KY	21073	1.95
FULTON	KY	21075	2.30
GALLATIN	KY	21077	1.95
GARRARD	KY	21079	1.95

County/Parish/City	State	Fips__code	Class I differential adjusted for location
GRANT	KY	21081	1.95
GRAVES	KY	21083	2.30
GRAYSON	KY	21085	2.10
GREEN	KY	21087	1.95
GREENUP	KY	21089	2.20
HANCOCK	KY	21091	2.10
HARDIN	KY	21093	1.95
HARLAN	KY	21095	2.15
HARRISON	KY	21097	2.05
HART	KY	21099	1.95
HENDERSON	KY	21101	2.10
HENRY	KY	21103	1.95
HICKMAN	KY	21105	2.30
HOPKINS	KY	21107	2.20
JACKSON	KY	21109	1.95
JEFFERSON	KY	21111	1.95
JESSAMINE	KY	21113	1.95
JOHNSON	KY	21115	2.15
KENTON	KY	21117	2.05
KNOTT	KY	21119	2.15
KNOX	KY	21121	2.15
LARUE	KY	21123	1.95
LAUREL	KY	21125	2.15
LAWRENCE	KY	21127	2.15
LEE	KY	21129	2.05
LESLIE	KY	21131	2.15
LETCHER	KY	21133	2.15
LEWIS	KY	21135	2.05
LINCOLN	KY	21137	1.95
LIVINGSTON	KY	21139	2.30
LOGAN	KY	21141	2.20
LYON	KY	21143	2.30
MCCRACKEN	KY	21145	2.30
MCCREARY	KY	21147	2.15
MCLEAN	KY	21149	2.10
MADISON	KY	21151	2.05
MAGOFFIN	KY	21153	2.15
MARION	KY	21155	1.95
MARSHALL	KY	21157	2.30
MARTIN	KY	21159	2.15
MASON	KY	21161	2.05
MEADE	KY	21163	1.95
MENIFEE	KY	21165	2.05
MERCER	KY	21167	1.95
METCALFE	KY	21169	2.05
MONROE	KY	21171	2.05
MONTGOMERY	KY	21173	2.05
MORGAN	KY	21175	2.05
MUHLENBERG	KY	21177	2.20
NELSON	KY	21179	1.95
NICHOLAS	KY	21181	2.05
OHIO	KY	21183	2.10
OLDHAM	KY	21185	1.95
OWEN	KY	21187	1.95
OWSLEY	KY	21189	2.15
PENDLETON	KY	21191	2.05
PERRY	KY	21193	2.15
PIKE	KY	21195	2.15
POWELL	KY	21197	2.05
PULASKI	KY	21199	2.15
ROBERTSON	KY	21201	2.05
ROCKCASTLE	KY	21203	1.95
ROWAN	KY	21205	2.05
RUSSELL	KY	21207	1.95
SCOTT	KY	21209	2.05
SHELBY	KY	21211	1.95
SIMPSON	KY	21213	2.05
SPENCER	KY	21215	1.95
TAYLOR	KY	21217	1.95
TODD	KY	21219	2.20
TRIGG	KY	21221	2.30

County/Parish/City	State	Fips__code	Class I differential adjusted for location
TRIMBLE	KY	21223	1.95
UNION	KY	21225	2.10
WARREN	KY	21227	2.05
WASHINGTON	KY	21229	1.95
WAYNE	KY	21231	2.15
WEBSTER	KY	21233	2.10
WHITLEY	KY	21235	2.15
WOLFE	KY	21237	2.05
WOODFORD	KY	21239	1.95
ACADIA	LA	22001	3.05
ALLEN	LA	22003	2.85
ASCENSION	LA	22005	2.85
ASSUMPTION	LA	22007	3.05
AVOYELLES	LA	22009	2.85
BEAUREGARD	LA	22011	2.85
BIENVILLE	LA	22013	2.65
BOSSIER	LA	22015	2.35
CADDO	LA	22017	2.35
CALCASIEU	LA	22019	3.05
CALDWELL	LA	22021	2.75
CAMERON	LA	22023	3.05
CATAHOULA	LA	22025	2.85
CLAIBORNE	LA	22027	2.65
CONCORDIA	LA	22029	2.85
DE SOTO	LA	22031	2.65
EAST BATON ROUGE	LA	22033	2.85
EAST CARROLL	LA	22035	2.75
EAST FELICIANA	LA	22037	2.85
EVANGELINE	LA	22039	2.85
FRANKLIN	LA	22041	2.75
GRANT	LA	22043	2.75
IBERIA	LA	22045	3.05
IBERVILLE	LA	22047	2.85
JACKSON	LA	22049	2.75
JEFFERSON	LA	22051	3.05
JEFFERSON DAVIS	LA	22053	3.05
LAFAYETTE	LA	22055	3.05
LAFOURCHE	LA	22057	3.05
LA SALLE	LA	22059	2.75
LINCOLN	LA	22061	2.65
LIVINGSTON	LA	22063	2.85
MADISON	LA	22065	2.75
MOREHOUSE	LA	22067	2.75
NATCHITOCHES	LA	22069	2.75
ORLEANS	LA	22071	3.05
OUACHITA	LA	22073	2.75
PLAQUEMINES	LA	22075	3.05
POINTE COUPEE	LA	22077	2.85
RAPIDES	LA	22079	2.85
RED RIVER	LA	22081	2.65
RICHLAND	LA	22083	2.75
SABINE	LA	22085	2.75
ST. BERNARD	LA	22087	3.05
ST. CHARLES	LA	22089	3.05
ST. HELENA	LA	22091	2.85
ST. JAMES	LA	22093	2.85
ST. JOHN THE BAPTIST	LA	22095	2.85
ST. LANDRY	LA	22097	3.05
ST. MARTIN	LA	22099	3.05
ST. MARY	LA	22101	3.05
ST. TAMMANY	LA	22103	2.85
TANGIPAHOA	LA	22105	2.85
TENSAS	LA	22107	2.85
TERREBONNE	LA	22109	3.05
UNION	LA	22111	2.65
VERMILION	LA	22113	3.05
VERNON	LA	22115	2.85
WASHINGTON	LA	22117	2.85
WEBSTER	LA	22119	2.35
WEST BATON ROUGE	LA	22121	2.85
WEST CARROLL	LA	22123	2.75

County/Parish/City	State	Fips__code	Class I differential adjusted for location
WEST FELICIANA	LA	22125	2.85
WINN	LA	22127	2.75
ANDROSCOGGIN	ME	23001	2.20
AROOSTOOK	ME	23003	2.15
CUMBERLAND	ME	23005	2.30
FRANKLIN	ME	23007	2.15
HANCOCK	ME	23009	2.15
KENNEBEC	ME	23011	2.20
KNOX	ME	23013	2.20
LINCOLN	ME	23015	2.20
OXFORD	ME	23017	2.15
PENOBSCOT	ME	23019	2.15
PISCATAQUIS	ME	23021	2.15
SAGADAHOC	ME	23023	2.30
SOMERSET	ME	23025	2.15
WALDO	ME	23027	2.20
WASHINGTON	ME	23029	2.15
YORK	ME	23031	2.45
ALLEGANY	MD	24001	2.05
ANNE ARUNDEL	MD	24003	2.05
BALTIMORE	MD	24005	2.05
CALVERT	MD	24009	2.05
CAROLINE	MD	24011	2.10
CARROLL	MD	24013	2.05
CECIL	MD	24015	2.10
CHARLES	MD	24017	2.05
DORCHESTER	MD	24019	2.10
FREDERICK	MD	24021	2.05
GARRETT	MD	24023	2.05
HARFORD	MD	24025	2.05
HOWARD	MD	24027	2.05
KENT	MD	24029	2.10
MONTGOMERY	MD	24031	2.05
PRINCE GEORGE'S	MD	24033	2.05
QUEEN ANNE'S	MD	24035	2.10
ST. MARY'S	MD	24037	2.05
SOMERSET	MD	24039	2.10
TALBOT	MD	24041	2.10
WASHINGTON	MD	24043	2.05
WICOMICO	MD	24045	2.10
WORCESTER	MD	24047	2.10
BALTIMORE CITY	MD	24510	2.05
BARNSTABLE	MA	25001	2.75
BERKSHIRE	MA	25003	2.30
BRISTOL	MA	25005	2.75
DUKES	MA	25007	2.75
ESSEX	MA	25009	2.75
FRANKLIN	MA	25011	2.40
HAMPDEN	MA	25013	2.40
HAMPSHIRE	MA	25015	2.40
MIDDLESEX	MA	25017	2.75
NANTUCKET	MA	25019	2.75
NORFOLK	MA	25021	2.75
PLYMOUTH	MA	25023	2.75
SUFFOLK	MA	25025	2.75
WORCESTER	MA	25027	2.60
ALCONA	MI	26001	1.50
ALGER	MI	26003	1.60
ALLEGAN	MI	26005	1.80
ALPENA	MI	26007	1.35
ANTRIM	MI	26009	1.35
ARENAC	MI	26011	1.70
BARAGA	MI	26013	1.50
BARRY	MI	26015	1.80
BAY	MI	26017	1.70
BENZIE	MI	26019	1.50
BERRIEN	MI	26021	1.80
BRANCH	MI	26023	1.80
CALHOUN	MI	26025	1.80
CASS	MI	26027	1.80
CHARLEVOIX	MI	26029	1.35

County/Parish/City	State	Fips__code	Class I differential adjusted for location
CHEBOYGAN	MI	26031	1.35
CHIPPEWA	MI	26033	1.70
CLARE	MI	26035	1.70
CLINTON	MI	26037	1.80
CRAWFORD	MI	26039	1.50
DELTA	MI	26041	1.60
DICKINSON	MI	26043	1.40
EATON	MI	26045	1.80
EMMET	MI	26047	1.35
GENESEE	MI	26049	1.85
GLADWIN	MI	26051	1.70
GOGEBIC	MI	26053	1.40
GRAND TRAVERSE	MI	26055	1.50
GRATIOT	MI	26057	1.70
HILLSDALE	MI	26059	1.80
HOUGHTON	MI	26061	1.50
HURON	MI	26063	1.85
INGHAM	MI	26065	1.80
IONIA	MI	26067	1.80
IOSCO	MI	26069	1.50
IRON	MI	26071	1.40
ISABELLA	MI	26073	1.70
JACKSON	MI	26075	1.80
KALAMAZOO	MI	26077	1.80
KALKASKA	MI	26079	1.50
KENT	MI	26081	1.70
KEWEENAW	MI	26083	1.50
LAKE	MI	26085	1.70
LAPEER	MI	26087	1.85
LEELANAU	MI	26089	1.50
LENAWEE	MI	26091	1.80
LIVINGSTON	MI	26093	1.85
LUCE	MI	26095	1.70
MACKINAC	MI	26097	1.70
MACOMB	MI	26099	1.85
MANISTEE	MI	26101	1.50
MARQUETTE	MI	26103	1.50
MASON	MI	26105	1.70
MECOSTA	MI	26107	1.70
MENOMINEE	MI	26109	1.50
MIDLAND	MI	26111	1.70
MISSAUKEE	MI	26113	1.50
MONROE	MI	26115	1.85
MONTCALM	MI	26117	1.70
MONTMORENCY	MI	26119	1.35
MUSKEGON	MI	26121	1.70
NEWAYGO	MI	26123	1.70
OAKLAND	MI	26125	1.85
OCEANA	MI	26127	1.70
OGEMAW	MI	26129	1.50
ONTONAGON	MI	26131	1.40
OSCEOLA	MI	26133	1.70
OSCODA	MI	26135	1.50
OTSEGO	MI	26137	1.35
OTTAWA	MI	26139	1.70
PRESQUE ISLE	MI	26141	1.35
ROSCOMMON	MI	26143	1.50
SAGINAW	MI	26145	1.85
ST. CLAIR	MI	26147	1.85
ST. JOSEPH	MI	26149	1.80
SANILAC	MI	26151	1.85
SCHOOLCRAFT	MI	26153	1.60
SHIAWASSEE	MI	26155	1.85
TUSCOLA	MI	26157	1.85
VAN BUREN	MI	26159	1.80
WASHTENAW	MI	26161	1.85
WAYNE	MI	26163	1.85
WEXFORD	MI	26165	1.50
AITKIN	MN	27001	1.30
ANOKA	MN	27003	1.60
BECKER	MN	27005	1.40

County/Parish/City	State	Fips__code	Class I differential adjusted for location
BELTRAMI	MN	27007	1.10
BENTON	MN	27009	1.50
BIG STONE	MN	27011	1.50
BLUE EARTH	MN	27013	1.60
BROWN	MN	27015	1.60
CARLTON	MN	27017	1.65
CARVER	MN	27019	1.60
CASS	MN	27021	1.30
CHIPPEWA	MN	27023	1.50
CHISAGO	MN	27025	1.60
CLAY	MN	27027	1.40
CLEARWATER	MN	27029	1.10
COOK	MN	27031	1.65
COTTONWOOD	MN	27033	1.60
CROW WING	MN	27035	1.30
DAKOTA	MN	27037	1.60
DODGE	MN	27039	1.60
DOUGLAS	MN	27041	1.50
FARIBAULT	MN	27043	1.60
FILLMORE	MN	27045	1.60
FREEBORN	MN	27047	1.60
GOODHUE	MN	27049	1.60
GRANT	MN	27051	1.50
HENNEPIN	MN	27053	1.60
HOUSTON	MN	27055	1.60
HUBBARD	MN	27057	1.30
ISANTI	MN	27059	1.60
ITASCA	MN	27061	1.30
JACKSON	MN	27063	1.60
KANABEC	MN	27065	1.50
KANDIYOHI	MN	27067	1.50
KITTSON	MN	27069	1.10
KOOCHICHING	MN	27071	1.30
LAC QUI PARLE	MN	27073	1.50
LAKE	MN	27075	1.65
LAKE OF THE WOODS	MN	27077	1.10
LE SUEUR	MN	27079	1.60
LINCOLN	MN	27081	1.50
LYON	MN	27083	1.50
MCLEOD	MN	27085	1.60
MAHNOMEN	MN	27087	1.40
MARSHALL	MN	27089	1.10
MARTIN	MN	27091	1.60
MEEKER	MN	27093	1.60
MILLE LACS	MN	27095	1.50
MORRISON	MN	27097	1.50
MOWER	MN	27099	1.60
MURRAY	MN	27101	1.60
NICOLLET	MN	27103	1.60
NOBLES	MN	27105	1.60
NORMAN	MN	27107	1.40
OLMSTED	MN	27109	1.60
OTTER TAIL	MN	27111	1.40
PENNINGTON	MN	27113	1.10
PINE	MN	27115	1.65
PIPESTONE	MN	27117	1.60
POLK	MN	27119	1.40
POPE	MN	27121	1.50
RAMSEY	MN	27123	1.60
RED LAKE	MN	27125	1.10
REDWOOD	MN	27127	1.60
RENVILLE	MN	27129	1.60
RICE	MN	27131	1.60
ROCK	MN	27133	1.60
ROSEAU	MN	27135	1.10
ST. LOUIS	MN	27137	1.65
SCOTT	MN	27139	1.60
SHERBURNE	MN	27141	1.60
SIBLEY	MN	27143	1.60
STEARNS	MN	27145	1.50
STEELE	MN	27147	1.60

County/Parish/City	State	Fips__code	Class I differential adjusted for location
STEVENS	MN	27149	1.50
SWIFT	MN	27151	1.50
TODD	MN	27153	1.50
TRAVERSE	MN	27155	1.50
WABASHA	MN	27157	1.60
WADENA	MN	27159	1.30
WASECA	MN	27161	1.60
WASHINGTON	MN	27163	1.60
WATONWAN	MN	27165	1.60
WILKIN	MN	27167	1.40
WINONA	MN	27169	1.60
WRIGHT	MN	27171	1.60
YELLOW MEDICINE	MN	27173	1.50
ADAMS	MS	28001	2.85
ALCORN	MS	28003	2.70
AMITE	MS	28005	2.85
ATTALA	MS	28007	2.85
BENTON	MS	28009	2.70
BOLIVAR	MS	28011	2.85
CALHOUN	MS	28013	2.85
CARROLL	MS	28015	2.85
CHICKASAW	MS	28017	2.85
CHOCTAW	MS	28019	2.85
CLAIBORNE	MS	28021	2.85
CLARKE	MS	28023	3.10
CLAY	MS	28025	2.85
COAHOMA	MS	28027	2.85
COPIAH	MS	28029	2.85
COVINGTON	MS	28031	3.00
DE SOTO	MS	28033	2.85
FORREST	MS	28035	3.10
FRANKLIN	MS	28037	2.85
GEORGE	MS	28039	3.00
GREENE	MS	28041	3.10
GRENADA	MS	28043	2.85
HANCOCK	MS	28045	3.00
HARRISON	MS	28047	3.00
HINDS	MS	28049	2.85
HOLMES	MS	28051	2.85
HUMPHREYS	MS	28053	2.85
ISSAQUENA	MS	28055	2.85
ITAWAMBA	MS	28057	2.55
JACKSON	MS	28059	3.00
JASPER	MS	28061	3.10
JEFFERSON	MS	28063	2.85
JEFFERSON DAVIS	MS	28065	3.00
JONES	MS	28067	3.10
KEMPER	MS	28069	2.70
LAFAYETTE	MS	28071	2.85
LAMAR	MS	28073	3.00
LAUDERDALE	MS	28075	2.70
LAWRENCE	MS	28077	2.85
LEAKE	MS	28079	2.70
LEE	MS	28081	2.70
LEFLORE	MS	28083	2.85
LINCOLN	MS	28085	2.85
LOWNDES	MS	28087	2.70
MADISON	MS	28089	2.85
MARION	MS	28091	3.00
MARSHALL	MS	28093	2.85
MONROE	MS	28095	2.70
MONTGOMERY	MS	28097	2.85
NESHOBA	MS	28099	2.70
NEWTON	MS	28101	2.70
NOXUBEE	MS	28103	2.70
OKTIBBEHA	MS	28105	2.70
PANOLA	MS	28107	2.85
PEARL RIVER	MS	28109	3.00
PERRY	MS	28111	3.10
PIKE	MS	28113	2.85
PONTOTOC	MS	28115	2.85

County/Parish/City	State	Fips__code	Class I differential adjusted for location
PRENTISS	MS	28117	2.70
QUITMAN	MS	28119	2.85
RANKIN	MS	28121	2.85
SCOTT	MS	28123	2.70
SHARKEY	MS	28125	2.85
SIMPSON	MS	28127	2.85
SMITH	MS	28129	3.00
STONE	MS	28131	3.00
SUNFLOWER	MS	28133	2.85
TALLAHATCHIE	MS	28135	2.85
TATE	MS	28137	2.85
TIPPAH	MS	28139	2.70
TISHOMINGO	MS	28141	2.50
TUNICA	MS	28143	2.85
UNION	MS	28145	2.70
WALTHALL	MS	28147	2.85
WARREN	MS	28149	2.85
WASHINGTON	MS	28151	2.85
WAYNE	MS	28153	3.10
WEBSTER	MS	28155	2.85
WILKINSON	MS	28157	2.85
WINSTON	MS	28159	2.70
YALOBUSHA	MS	28161	2.85
YAZOO	MS	28163	2.85
ADAIR	MO	29001	1.90
ANDREW	MO	29003	1.90
ATCHISON	MO	29005	1.90
AUDRAIN	MO	29007	2.00
BARRY	MO	29009	1.70
BARTON	MO	29011	1.70
BATES	MO	29013	1.70
BENTON	MO	29015	1.90
BOLLINGER	MO	29017	2.10
BOONE	MO	29019	2.00
BUCHANAN	MO	29021	1.90
BUTLER	MO	29023	2.10
CALDWELL	MO	29025	1.90
CALLAWAY	MO	29027	2.00
CAMDEN	MO	29029	1.90
CAPE GIRARDEAU	MO	29031	2.10
CARROLL	MO	29033	1.90
CARTER	MO	29035	2.10
CASS	MO	29037	1.90
CEDAR	MO	29039	1.70
CHARITON	MO	29041	1.90
CHRISTIAN	MO	29043	1.70
CLARK	MO	29045	1.90
CLAY	MO	29047	1.90
CLINTON	MO	29049	1.90
COLE	MO	29051	2.00
COOPER	MO	29053	1.90
CRAWFORD	MO	29055	1.90
DADE	MO	29057	1.70
DALLAS	MO	29059	1.70
DAVIESS	MO	29061	1.90
DE KALB	MO	29063	1.90
DENT	MO	29065	1.90
DOUGLAS	MO	29067	1.70
DUNKLIN	MO	29069	2.35
FRANKLIN	MO	29071	2.00
GASCONADE	MO	29073	2.00
GENTRY	MO	29075	1.90
GREENE	MO	29077	1.70
GRUNDY	MO	29079	1.90
HARRISON	MO	29081	1.90
HENRY	MO	29083	1.70
HICKORY	MO	29085	1.70
HOLT	MO	29087	1.90
HOWARD	MO	29089	1.90
HOWELL	MO	29091	1.90
IRON	MO	29093	2.10

County/Parish/City	State	Fips__code	Class I differential adjusted for location
JACKSON	MO	29095	1.90
JASPER	MO	29097	1.70
JEFFERSON	MO	29099	2.10
JOHNSON	MO	29101	1.90
KNOX	MO	29103	1.90
LACLEDE	MO	29105	1.70
LAFAYETTE	MO	29107	1.90
LAWRENCE	MO	29109	1.70
LEWIS	MO	29111	1.90
LINCOLN	MO	29113	2.00
LINN	MO	29115	1.90
LIVINGSTON	MO	29117	1.90
MCDONALD	MO	29119	1.70
MACON	MO	29121	1.90
MADISON	MO	29123	2.10
MARIES	MO	29125	1.90
MARION	MO	29127	2.00
MERCER	MO	29129	1.90
MILLER	MO	29131	1.90
MISSISSIPPI	MO	29133	2.10
MONITEAU	MO	29135	2.00
MONROE	MO	29137	2.00
MONTGOMERY	MO	29139	2.00
MORGAN	MO	29141	1.90
NEW MADRID	MO	29143	2.35
NEWTON	MO	29145	1.70
NODAWAY	MO	29147	1.90
OREGON	MO	29149	2.10
OSAGE	MO	29151	2.00
OZARK	MO	29153	1.90
PEMISCOT	MO	29155	2.35
PERRY	MO	29157	2.10
PETTIS	MO	29159	1.90
PHELPS	MO	29161	1.90
PIKE	MO	29163	2.00
PLATTE	MO	29165	1.90
POLK	MO	29167	1.70
PULASKI	MO	29169	1.90
PUTNAM	MO	29171	1.90
RALLS	MO	29173	2.00
RANDOLPH	MO	29175	1.90
RAY	MO	29177	1.90
REYNOLDS	MO	29179	2.10
RIPLEY	MO	29181	2.10
ST. CHARLES	MO	29183	2.00
ST. CLAIR	MO	29185	1.70
STE. GENEVIEVE	MO	29186	2.10
ST. FRANCOIS	MO	29187	2.10
ST. LOUIS	MO	29189	2.10
SALINE	MO	29195	1.90
SCHUYLER	MO	29197	1.90
SCOTLAND	MO	29199	1.90
SCOTT	MO	29201	2.10
SHANNON	MO	29203	1.90
SHELBY	MO	29205	1.90
STODDARD	MO	29207	2.10
STONE	MO	29209	1.70
SULLIVAN	MO	29211	1.90
TANEY	MO	29213	1.70
TEXAS	MO	29215	1.90
VERNON	MO	29217	1.70
WARREN	MO	29219	2.00
WASHINGTON	MO	29221	2.10
WAYNE	MO	29223	2.10
WEBSTER	MO	29225	1.70
WORTH	MO	29227	1.90
WRIGHT	MO	29229	1.70
ST. LOUIS CITY	MO	29510	2.10
BEAVERHEAD	MT	30001	1.40
BIG HORN	MT	30003	1.50
BLAINE	MT	30005	1.65

County/Parish/City	State	Fips__code	Class I differential adjusted for location
BROADWATER	MT	30007	1.40
CARBON	MT	30009	1.40
CARTER	MT	30011	1.40
CASCADE	MT	30013	1.75
CHOUTEAU	MT	30015	1.75
CUSTER	MT	30017	1.50
DANIELS	MT	30019	1.50
DAWSON	MT	30021	1.50
DEER LODGE	MT	30023	1.40
FALLON	MT	30025	1.40
FERGUS	MT	30027	1.65
FLATHEAD	MT	30029	1.50
GALLATIN	MT	30031	1.40
GARFIELD	MT	30033	1.65
GLACIER	MT	30035	1.65
GOLDEN VALLEY	MT	30037	1.65
GRANITE	MT	30039	1.65
HILL	MT	30041	1.75
JEFFERSON	MT	30043	1.40
JUDITH BASIN	MT	30045	1.65
LAKE	MT	30047	1.50
LEWIS AND CLARK	MT	30049	1.65
LIBERTY	MT	30051	1.75
LINCOLN	MT	30053	1.50
MCCONE	MT	30055	1.50
MADISON	MT	30057	1.40
MEAGHER	MT	30059	1.40
MINERAL	MT	30061	1.50
MISSOULA	MT	30063	1.50
MUSSELSHELL	MT	30065	1.65
PARK	MT	30067	1.40
PETROLEUM	MT	30069	1.65
PHILLIPS	MT	30071	1.65
PONDERA	MT	30073	1.65
POWDER RIVER	MT	30075	1.40
POWELL	MT	30077	1.65
PRAIRIE	MT	30079	1.50
RAVALLI	MT	30081	1.65
RICHLAND	MT	30083	1.50
ROOSEVELT	MT	30085	1.50
ROSEBUD	MT	30087	1.50
SANDERS	MT	30089	1.50
SHERIDAN	MT	30091	1.50
SILVER BOW	MT	30093	1.40
STILLWATER	MT	30095	1.40
SWEET GRASS	MT	30097	1.40
TETON	MT	30099	1.65
TOOLE	MT	30101	1.65
TREASURE	MT	30103	1.50
VALLEY	MT	30105	1.65
WHEATLAND	MT	30107	1.65
WIBAUX	MT	30109	1.40
YELLOWSTONE	MT	30111	1.65
YELLOWSTONE NATIONAL			
PARK	MT	30113	1.40
ADAMS	NE	31001	1.60
ANTELOPE	NE	31003	1.60
ARTHUR	NE	31005	1.40
BANNER	NE	31007	1.40
BLAINE	NE	31009	1.50
BOONE	NE	31011	1.60
BOX BUTTE	NE	31013	1.40
BOYD	NE	31015	1.50
BROWN	NE	31017	1.50
BUFFALO	NE	31019	1.60
BURT	NE	31021	1.80
BUTLER	NE	31023	1.80
CASS	NE	31025	1.90
CEDAR	NE	31027	1.60

County/Parish/City	State	Fips__code	Class I differential adjusted for location
CHASE	NE	31029	1.50
CHERRY	NE	31031	1.40
CHEYENNE	NE	31033	1.40
CLAY	NE	31035	1.80
COLFAX	NE	31037	1.80
CUMING	NE	31039	1.80
CUSTER	NE	31041	1.50
DAKOTA	NE	31043	1.80
DAWES	NE	31045	1.40
DAWSON	NE	31047	1.60
DEUEL	NE	31049	1.40
DIXON	NE	31051	1.60
DODGE	NE	31053	1.80
DOUGLAS	NE	31055	1.90
DUNDY	NE	31057	1.60
FILLMORE	NE	31059	1.80
FRANKLIN	NE	31061	1.60
FRONTIER	NE	31063	1.60
FURNAS	NE	31065	1.60
GAGE	NE	31067	1.90
GARDEN	NE	31069	1.40
GARFIELD	NE	31071	1.50
GOSPER	NE	31073	1.60
GRANT	NE	31075	1.40
GREELEY	NE	31077	1.60
HALL	NE	31079	1.60
HAMILTON	NE	31081	1.80
HARLAN	NE	31083	1.60
HAYES	NE	31085	1.60
HITCHCOCK	NE	31087	1.60
HOLT	NE	31089	1.50
HOOKER	NE	31091	1.40
HOWARD	NE	31093	1.60
JEFFERSON	NE	31095	1.80
JOHNSON	NE	31097	1.90
KEARNEY	NE	31099	1.60
KEITH	NE	31101	1.40
KEYA PAHA	NE	31103	1.50
KIMBALL	NE	31105	1.40
KNOX	NE	31107	1.60
LANCASTER	NE	31109	1.80
LINCOLN	NE	31111	1.50
LOGAN	NE	31113	1.50
LOUP	NE	31115	1.50
MCPHERSON	NE	31117	1.50
MADISON	NE	31119	1.60
MERRICK	NE	31121	1.60
MORRILL	NE	31123	1.40
NANCE	NE	31125	1.60
NEMAHA	NE	31127	1.90
NUCKOLLS	NE	31129	1.60
OTOE	NE	31131	1.90
PAWNEE	NE	31133	1.90
PERKINS	NE	31135	1.50
PHELPS	NE	31137	1.60
PIERCE	NE	31139	1.60
PLATTE	NE	31141	1.80
POLK	NE	31143	1.80
RED WILLOW	NE	31145	1.60
RICHARDSON	NE	31147	1.90
ROCK	NE	31149	1.50
SALINE	NE	31151	1.80
SARPY	NE	31153	1.90
SAUNDERS	NE	31155	1.80
SCOTTS BLUFF	NE	31157	1.40
SEWARD	NE	31159	1.80
SHERIDAN	NE	31161	1.40
SHERMAN	NE	31163	1.60
SIOUX	NE	31165	1.40
STANTON	NE	31167	1.60
THAYER	NE	31169	1.80

County/Parish/City	State	Fips__code	Class I differential adjusted for location
THOMAS	NE	31171	1.40
THURSTON	NE	31173	1.80
VALLEY	NE	31175	1.60
WASHINGTON	NE	31177	1.90
WAYNE	NE	31179	1.60
WEBSTER	NE	31181	1.60
WHEELER	NE	31183	1.60
YORK	NE	31185	1.80
CHURCHILL	NV	32001	1.40
CLARK	NV	32003	2.25
DOUGLAS	NV	32005	1.20
ELKO	NV	32007	1.40
ESMERALDA	NV	32009	1.50
EUREKA	NV	32011	1.40
HUMBOLDT	NV	32013	1.40
LANDER	NV	32015	1.40
LINCOLN	NV	32017	1.80
LYON	NV	32019	1.20
MINERAL	NV	32021	1.20
NYE	NV	32023	1.50
PERSHING	NV	32027	1.40
STOREY	NV	32029	1.20
WASHOE	NV	32031	1.40
WHITE PINE	NV	32033	1.50
CARSON CITY	NV	32510	1.20
BELKNAP	NH	33001	2.30
CARROLL	NH	33003	2.15
CHESHIRE	NH	33005	2.50
COOS	NH	33007	1.95
GRAFTON	NH	33009	2.15
HILLSBOROUGH	NH	33011	2.60
MERRIMACK	NH	33013	2.45
ROCKINGHAM	NH	33015	2.60
STRAFFORD	NH	33017	2.45
SULLIVAN	NH	33019	2.30
ATLANTIC	NJ	34001	2.20
BERGEN	NJ	34003	2.50
BURLINGTON	NJ	34005	2.20
CAMDEN	NJ	34007	2.20
CAPE MAY	NJ	34009	2.20
CUMBERLAND	NJ	34011	2.20
ESSEX	NJ	34013	2.50
GLOUCESTER	NJ	34015	2.20
HUDSON	NJ	34017	2.50
HUNTERDON	NJ	34019	2.30
MERCER	NJ	34021	2.30
MIDDLESEX	NJ	34023	2.30
MONMOUTH	NJ	34025	2.30
MORRIS	NJ	34027	2.30
OCEAN	NJ	34029	2.30
PASSAIC	NJ	34031	2.50
SALEM	NJ	34033	2.20
SOMERSET	NJ	34035	2.30
SUSSEX	NJ	34037	2.30
UNION	NJ	34039	2.50
WARREN	NJ	34041	2.30
BERNALILLO	NM	35001	2.30
CATRON	NM	35003	1.90
CHAVES	NM	35005	1.60
CIBOLA	NM	35006	1.90
COLFAX	NM	35007	1.90
CURRY	NM	35009	1.60
DE BACA	NM	35011	1.60
DONA ANA	NM	35013	1.60
EDDY	NM	35015	1.60
GRANT	NM	35017	1.60
GUADALUPE	NM	35019	1.90
HARDING	NM	35021	1.90
HIDALGO	NM	35023	1.60
LEA	NM	35025	1.60
LINCOLN	NM	35027	1.90

County/Parish/City	State	Fips__code	Class I differential adjusted for location
LOS ALAMOS	NM	35028	2.30
LUNA	NM	35029	1.60
MCKINLEY	NM	35031	1.90
MORA	NM	35033	1.90
OTERO	NM	35035	1.60
QUAY	NM	35037	1.60
RIO ARRIBA	NM	35039	2.20
ROOSEVELT	NM	35041	1.60
SANDOVAL	NM	35043	2.30
SAN JUAN	NM	35045	2.20
SAN MIGUEL	NM	35047	1.90
SANTA FE	NM	35049	2.30
SIERRA	NM	35051	1.90
SOCORRO	NM	35053	1.90
TAOS	NM	35055	1.90
TORRANCE	NM	35057	1.90
UNION	NM	35059	1.90
VALENCIA	NM	35061	1.90
ALBANY	NY	36001	2.15
ALLEGANY	NY	36003	1.85
BRONX	NY	36005	2.50
BROOME	NY	36007	1.90
CATTARAUGUS	NY	36009	1.60
CAYUGA	NY	36011	1.85
CHAUTAUQUA	NY	36013	1.60
CHEMUNG	NY	36015	1.85
CHENANGO	NY	36017	1.85
CLINTON	NY	36019	1.95
COLUMBIA	NY	36021	2.15
CORTLAND	NY	36023	1.85
DELAWARE	NY	36025	2.15
DUTCHESS	NY	36027	2.30
ERIE	NY	36029	1.85
ESSEX	NY	36031	2.05
FRANKLIN	NY	36033	1.85
FULTON	NY	36035	2.05
GENESEE	NY	36037	1.85
GREENE	NY	36039	2.15
HAMILTON	NY	36041	1.95
HERKIMER	NY	36043	1.95
JEFFERSON	NY	36045	1.85
KINGS	NY	36047	2.50
LEWIS	NY	36049	1.85
LIVINGSTON	NY	36051	1.85
MADISON	NY	36053	1.85
MONROE	NY	36055	1.85
MONTGOMERY	NY	36057	2.05
NASSAU	NY	36059	2.50
NEW YORK	NY	36061	2.50
NIAGARA	NY	36063	1.85
ONEIDA	NY	36065	1.85
ONONDAGA	NY	36067	1.85
ONTARIO	NY	36069	1.85
ORANGE	NY	36071	2.30
ORLEANS	NY	36073	1.85
OSWEGO	NY	36075	1.85
OTSEGO	NY	36077	1.95
PUTNAM	NY	36079	2.30
QUEENS	NY	36081	2.50
RENSSELAER	NY	36083	2.15
RICHMOND	NY	36085	2.50
ROCKLAND	NY	36087	2.50
ST. LAWRENCE	NY	36089	1.85
SARATOGA	NY	36091	2.05
SCHENECTADY	NY	36093	2.15
SCHOHARIE	NY	36095	2.05
SCHUYLER	NY	36097	1.85
SENECA	NY	36099	1.85
STEUBEN	NY	36101	1.85
SUFFOLK	NY	36103	2.50
SULLIVAN	NY	36105	2.15

County/Parish/City	State	Fips__code	Class I differential adjusted for location
TIOGA	NY	36107	1.90
TOMPKINS	NY	36109	1.85
ULSTER	NY	36111	2.15
WARREN	NY	36113	1.95
WASHINGTON	NY	36115	2.05
WAYNE	NY	36117	1.85
WESTCHESTER	NY	36119	2.50
WYOMING	NY	36121	1.85
YATES	NY	36123	1.85
ALAMANCE	NC	37001	2.35
ALEXANDER	NC	37003	2.35
ALLEGHANY	NC	37005	2.35
ANSON	NC	37007	2.55
ASHE	NC	37009	2.25
AVERY	NC	37011	2.25
BEAUFORT	NC	37013	2.65
BERTIE	NC	37015	2.65
BLADEN	NC	37017	2.80
BRUNSWICK	NC	37019	2.85
BUNCOMBE	NC	37021	2.55
BURKE	NC	37023	2.35
CABARRUS	NC	37025	2.55
CALDWELL	NC	37027	2.35
CAMDEN	NC	37029	2.55
CARTERET	NC	37031	2.85
CASWELL	NC	37033	2.35
CATAWBA	NC	37035	2.35
CHATHAM	NC	37037	2.35
CHEROKEE	NC	37039	2.55
CHOWAN	NC	37041	2.55
CLAY	NC	37043	2.55
CLEVELAND	NC	37045	2.55
COLUMBUS	NC	37047	3.00
CRAVEN	NC	37049	2.85
CUMBERLAND	NC	37051	2.80
CURRITUCK	NC	37053	2.55
DARE	NC	37055	2.65
DAVIDSON	NC	37057	2.35
DAVIE	NC	37059	2.35
DUPLIN	NC	37061	2.85
DURHAM	NC	37063	2.35
EDGECOMBE	NC	37065	2.65
FORSYTH	NC	37067	2.35
FRANKLIN	NC	37069	2.55
GASTON	NC	37071	2.55
GATES	NC	37073	2.55
GRAHAM	NC	37075	2.55
GRANVILLE	NC	37077	2.55
GREENE	NC	37079	2.65
GUILFORD	NC	37081	2.35
HALIFAX	NC	37083	2.55
HARNETT	NC	37085	2.55
HAYWOOD	NC	37087	2.55
HENDERSON	NC	37089	2.55
HERTFORD	NC	37091	2.55
HOKE	NC	37093	2.80
HYDE	NC	37095	2.65
IREDELL	NC	37097	2.35
JACKSON	NC	37099	2.55
JOHNSTON	NC	37101	2.65
JONES	NC	37103	2.85
LEE	NC	37105	2.55
LENOIR	NC	37107	2.85
LINCOLN	NC	37109	2.35
MCDOWELL	NC	37111	2.35
MACON	NC	37113	2.55
MADISON	NC	37115	2.25
MARTIN	NC	37117	2.65
MECKLENBURG	NC	37119	2.55
MITCHELL	NC	37121	2.25
MONTGOMERY	NC	37123	2.55

County/Parish/City	State	Fips__code	Class I differential adjusted for location
MOORE	NC	37125	2.55
NASH	NC	37127	2.65
NEW HANOVER	NC	37129	2.85
NORTHAMPTON	NC	37131	2.55
ONSLOW	NC	37133	2.85
ORANGE	NC	37135	2.35
PAMLICO	NC	37137	2.85
PASQUOTANK	NC	37139	2.55
PENDER	NC	37141	2.85
PERQUIMANS	NC	37143	2.55
PERSON	NC	37145	2.35
PITT	NC	37147	2.65
POLK	NC	37149	2.55
RANDOLPH	NC	37151	2.35
RICHMOND	NC	37153	2.55
ROBESON	NC	37155	3.00
ROCKINGHAM	NC	37157	2.35
ROWAN	NC	37159	2.35
RUTHERFORD	NC	37161	2.55
SAMPSON	NC	37163	2.80
SCOTLAND	NC	37165	2.80
STANLY	NC	37167	2.55
STOKES	NC	37169	2.35
SURRY	NC	37171	2.35
SWAIN	NC	37173	2.25
TRANSYLVANIA	NC	37175	2.55
TYRRELL	NC	37177	2.65
UNION	NC	37179	2.55
VANCE	NC	37181	2.55
WAKE	NC	37183	2.55
WARREN	NC	37185	2.55
WASHINGTON	NC	37187	2.65
WATAUGA	NC	37189	2.25
WAYNE	NC	37191	2.65
WILKES	NC	37193	2.35
WILSON	NC	37195	2.65
YADKIN	NC	37197	2.35
YANCEY	NC	37199	2.25
ADAMS	ND	38001	1.40
BARNES	ND	38003	1.40
BENSON	ND	38005	1.40
BILLINGS	ND	38007	1.40
BOTTINEAU	ND	38009	1.40
BOWMAN	ND	38011	1.40
BURKE	ND	38013	1.40
BURLEIGH	ND	38015	1.40
CASS	ND	38017	1.40
CAVALIER	ND	38019	1.40
DICKEY	ND	38021	1.40
DIVIDE	ND	38023	1.40
DUNN	ND	38025	1.40
EDDY	ND	38027	1.40
EMMONS	ND	38029	1.40
FOSTER	ND	38031	1.40
GOLDEN VALLEY	ND	38033	1.40
GRAND FORKS	ND	38035	1.40
GRANT	ND	38037	1.40
GRIGGS	ND	38039	1.40
HETTINGER	ND	38041	1.40
KIDDER	ND	38043	1.40
LA MOURE	ND	38045	1.40
LOGAN	ND	38047	1.40
MCHENRY	ND	38049	1.40
MCINTOSH	ND	38051	1.40
MCKENZIE	ND	38053	1.40
MCLEAN	ND	38055	1.40
MERCER	ND	38057	1.40
MORTON	ND	38059	1.40
MOUNTRAIL	ND	38061	1.40
NELSON	ND	38063	1.40
OLIVER	ND	38065	1.40

County/Parish/City	State	Fips__code	Class I differential adjusted for location
PEMBINA	ND	38067	1.40
PIERCE	ND	38069	1.40
RAMSEY	ND	38071	1.40
RANSOM	ND	38073	1.40
RENVILLE	ND	38075	1.40
RICHLAND	ND	38077	1.40
ROLETTE	ND	38079	1.40
SARGENT	ND	38081	1.40
SHERIDAN	ND	38083	1.40
SIOUX	ND	38085	1.40
SLOPE	ND	38087	1.40
STARK	ND	38089	1.40
STEELE	ND	38091	1.40
STUTSMAN	ND	38093	1.40
TOWNER	ND	38095	1.40
TRAILL	ND	38097	1.40
WALSH	ND	38099	1.40
WARD	ND	38101	1.40
WELLS	ND	38103	1.40
WILLIAMS	ND	38105	1.40
ADAMS	OH	39001	2.05
ALLEN	OH	39003	2.00
ASHLAND	OH	39005	2.00
ASHTABULA	OH	39007	2.00
ATHENS	OH	39009	2.00
AUGLAIZE	OH	39011	2.00
BELMONT	OH	39013	2.00
BROWN	OH	39015	2.05
BUTLER	OH	39017	2.05
CARROLL	OH	39019	1.95
CHAMPAIGN	OH	39021	2.00
CLARK	OH	39023	2.00
CLERMONT	OH	39025	2.05
CLINTON	OH	39027	2.05
COLUMBIANA	OH	39029	1.95
COSHOCTON	OH	39031	1.95
CRAWFORD	OH	39033	2.00
CUYAHOGA	OH	39035	2.00
DARKE	OH	39037	2.00
DEFIANCE	OH	39039	1.80
DELAWARE	OH	39041	2.00
ERIE	OH	39043	2.00
FAIRFIELD	OH	39045	2.00
FAYETTE	OH	39047	2.00
FRANKLIN	OH	39049	2.00
FULTON	OH	39051	1.85
GALLIA	OH	39053	2.20
GEAUGA	OH	39055	2.00
GREENE	OH	39057	2.00
GUERNSEY	OH	39059	2.00
HAMILTON	OH	39061	2.05
HANCOCK	OH	39063	2.00
HARDIN	OH	39065	2.00
HARRISON	OH	39067	1.95
HENRY	OH	39069	1.85
HIGHLAND	OH	39071	2.05
HOCKING	OH	39073	2.00
HOLMES	OH	39075	1.95
HURON	OH	39077	2.00
JACKSON	OH	39079	2.05
JEFFERSON	OH	39081	1.95
KNOX	OH	39083	2.00
LAKE	OH	39085	2.00
LAWRENCE	OH	39087	2.20
LICKING	OH	39089	2.00
LOGAN	OH	39091	2.00
LORAIN	OH	39093	2.00
LUCAS	OH	39095	1.85
MADISON	OH	39097	2.00
MAHONING	OH	39099	1.95
MARION	OH	39101	2.00

County/Parish/City	State	Fips__code	Class I differential adjusted for location
MEDINA	OH	39103	2.00
MEIGS	OH	39105	2.05
MERCER	OH	39107	2.00
MIAMI	OH	39109	2.00
MONROE	OH	39111	2.00
MONTGOMERY	OH	39113	2.00
MORGAN	OH	39115	2.00
MORROW	OH	39117	2.00
MUSKINGUM	OH	39119	2.00
NOBLE	OH	39121	2.00
OTTA	OH	39123	1.85
PAULDING	OH	39125	1.80
PERRY	OH	39127	2.00
PICKAWAY	OH	39129	2.00
PIKE	OH	39131	2.05
PORTAGE	OH	39133	2.00
PREBLE	OH	39135	2.00
PUTNAM	OH	39137	2.00
RICHLAND	OH	39139	2.00
ROSS	OH	39141	2.05
SANDUSKY	OH	39143	2.00
SCIOTO	OH	39145	2.05
SENECA	OH	39147	2.00
SHELBY	OH	39149	2.00
STARK	OH	39151	1.95
SUMMIT	OH	39153	2.00
TRUMBULL	OH	39155	2.00
TUSCARAWAS	OH	39157	1.95
UNION	OH	39159	2.00
VAN WERT	OH	39161	2.00
VINTON	OH	39163	2.05
WARREN	OH	39165	2.05
WASHINGTON	OH	39167	2.00
WAYNE	OH	39169	1.95
WILLIAMS	OH	39171	1.80
WOOD	OH	39173	1.85
WYANDOT	OH	39175	2.00
ADAIR	OK	40001	1.90
ALFALFA	OK	40003	1.90
ATOKA	OK	40005	1.95
BEAVER	OK	40007	1.90
BECKHAM	OK	40009	1.90
BLAINE	OK	40011	1.90
BRYAN	OK	40013	1.95
CADDO	OK	40015	1.90
CANADIAN	OK	40017	1.90
CARTER	OK	40019	1.95
CHEROKEE	OK	40021	1.90
CHOCTAW	OK	40023	1.95
CIMARRON	OK	40025	1.90
CLEVELAND	OK	40027	1.90
COAL	OK	40029	1.95
COMANCHE	OK	40031	1.95
COTTON	OK	40033	1.95
CRAIG	OK	40035	1.70
CREEK	OK	40037	1.90
CUSTER	OK	40039	1.90
DELAWARE	OK	40041	1.70
DEWEY	OK	40043	1.90
ELLIS	OK	40045	1.90
GARFIELD	OK	40047	1.90
GARVIN	OK	40049	1.95
GRADY	OK	40051	1.90
GRANT	OK	40053	1.90
GREER	OK	40055	1.95
HARMON	OK	40057	1.95
HARPER	OK	40059	1.90
HASKELL	OK	40061	1.90
HUGHES	OK	40063	1.90
JACKSON	OK	40065	1.95
JEFFERSON	OK	40067	1.95

County/Parish/City	State	Fips__code	Class I differential adjusted for location
JOHNSTON	OK	40069	1.95
KAY	OK	40071	1.90
KINGFISHER	OK	40073	1.90
KIOWA	OK	40075	1.95
LATIMER	OK	40077	1.90
LE FLORE	OK	40079	1.90
LINCOLN	OK	40081	1.90
LOGAN	OK	40083	1.90
LOVE	OK	40085	1.95
MCCLAIN	OK	40087	1.90
MCCURTAIN	OK	40089	1.95
MCINTOSH	OK	40091	1.90
MAJOR	OK	40093	1.90
MARSHALL	OK	40095	1.95
MAYES	OK	40097	1.70
MURRAY	OK	40099	1.95
MUSKOGEE	OK	40101	1.90
NOBLE	OK	40103	1.90
NOWATA	OK	40105	1.70
OKFUSKEE	OK	40107	1.90
OKLAHOMA	OK	40109	1.90
OKMULGEE	OK	40111	1.90
OSAGE	OK	40113	1.90
OTTAWA	OK	40115	1.70
PAWNEE	OK	40117	1.90
PAYNE	OK	40119	1.90
PITTSBURG	OK	40121	1.90
PONTOTOC	OK	40123	1.95
POTTAWATOMIE	OK	40125	1.90
PUSHMATAHA	OK	40127	1.95
ROGER MILLS	OK	40129	1.90
ROGERS	OK	40131	1.70
SEMINOLE	OK	40133	1.90
SEQUOYAH	OK	40135	1.90
STEPHENS	OK	40137	1.95
TEXAS	OK	40139	1.90
TILLMAN	OK	40141	1.95
TULSA	OK	40143	1.90
WAGONER	OK	40145	1.90
WASHINGTON	OK	40147	1.70
WASHITA	OK	40149	1.90
WOODS	OK	40151	1.90
WOODWARD	OK	40153	1.90
BAKER	OR	41001	1.35
BENTON	OR	41003	1.55
CLACKAMAS	OR	41005	1.45
CLATSOP	OR	41007	1.45
COLUMBIA	OR	41009	1.45
COOS	OR	41011	1.70
CROOK	OR	41013	1.30
CURRY	OR	41015	1.85
DESCHUTES	OR	41017	1.55
DOUGLAS	OR	41019	1.70
GILLIAM	OR	41021	1.30
GRANT	OR	41023	1.35
HARNEY	OR	41025	1.35
HOOD RIVER	OR	41027	1.45
JACKSON	OR	41029	1.85
JEFFERSON	OR	41031	1.30
JOSEPHINE	OR	41033	1.85
KLAMATH	OR	41035	1.70
LAKE	OR	41037	1.55
LANE	OR	41039	1.55
LINCOLN	OR	41041	1.55
LINN	OR	41043	1.55
MALHEUR	OR	41045	1.35
MARION	OR	41047	1.45
MORROW	OR	41049	1.30
MULTNOMAH	OR	41051	1.45
POLK	OR	41053	1.45
SHERMAN	OR	41055	1.30

County/Parish/City	State	Fips__code	Class I differential adjusted for location
TILLAMOOK	OR	41057	1.45
UMATILLA	OR	41059	1.35
UNION	OR	41061	1.35
WALLOWA	OR	41063	1.35
WASCO	OR	41065	1.30
WASHINGTON	OR	41067	1.45
WHEELER	OR	41069	1.30
YAMHILL	OR	41071	1.45
ADAMS	PA	42001	2.05
ALLEGHENY	PA	42003	1.95
ARMSTRONG	PA	42005	1.95
BEAVER	PA	42007	1.95
BEDFORD	PA	42009	2.05
BERKS	PA	42011	2.05
BLAIR	PA	42013	2.05
BRADFORD	PA	42015	1.90
BUCKS	PA	42017	2.10
BUTLER	PA	42019	1.95
CAMBRIA	PA	42021	2.05
CAMERON	PA	42023	1.95
CARBON	PA	42025	2.10
CENTRE	PA	42027	2.00
CHESTER	PA	42029	2.10
CLARION	PA	42031	1.95
CLEARFIELD	PA	42033	1.95
CLINTON	PA	42035	2.00
COLUMBIA	PA	42037	2.00
CRAWFORD	PA	42039	1.75
CUMBERLAND	PA	42041	2.05
DAUPHIN	PA	42043	2.05
DELAWARE	PA	42045	2.20
ELK	PA	42047	1.95
ERIE	PA	42049	1.75
FAYETTE	PA	42051	1.95
FOREST	PA	42053	1.75
FRANKLIN	PA	42055	2.05
FULTON	PA	42057	2.05
GREENE	PA	42059	1.95
HUNTINGDON	PA	42061	2.05
INDIANA	PA	42063	1.95
JEFFERSON	PA	42065	1.95
JUNIATA	PA	42067	2.00
LACKAWANNA	PA	42069	2.00
LANCASTER	PA	42071	2.05
LAWRENCE	PA	42073	1.95
LEBANON	PA	42075	2.05
LEHIGH	PA	42077	2.10
LUZERNE	PA	42079	2.00
LYCOMING	PA	42081	2.00
MCKEAN	PA	42083	1.85
MERCER	PA	42085	1.75
MIFFLIN	PA	42087	2.00
MONROE	PA	42089	2.10
MONTGOMERY	PA	42091	2.10
MONTOUR	PA	42093	2.00
NORTHAMPTON	PA	42095	2.10
NORTHUMBERLAND	PA	42097	2.00
PERRY	DPA	42099	2.05
PHILADELPHIA	PA	42101	2.20
PIKE	PA	42103	2.15
POTTER	PA	42105	1.90
SCHUYLKILL	PA	42107	2.05
SNYDER	PA	42109	2.00
SOMERSET	PA	42111	2.05
SULLIVAN	PA	42113	2.00
SUSQUEHANNA	PA	42115	1.90
TIOGA	PA	42117	1.90
UNION	PA	42119	2.00
VENANGO	PA	42121	1.75
WARREN	PA	42123	1.60
WASHINGTON	PA	42125	1.95

County/Parish/City	State	Fips__code	Class I differential adjusted for location
WAYNE	PA	42127	2.15
WESTMORELAND	PA	42129	1.95
WYOMING	PA	42131	2.00
YORK	PA	42133	2.05
BRISTOL	RI	44001	2.75
KENT	RI	44003	2.75
NEWPORT	RI	44005	2.75
PROVIDENCE	RI	44007	2.75
WASHINGTON	RI	44009	2.75
ABBEVILLE	SC	45001	2.70
AIKEN	SC	45003	2.80
ALLENDALE	SC	45005	3.10
ANDERSON	SC	45007	2.55
BAMBERG	SC	45009	3.10
BARNWELL	SC	45011	2.80
BEAUFORT	SC	45013	3.10
BERKELEY	SC	45015	3.00
CALHOUN	SC	45017	2.80
CHARLESTON	SC	45019	3.10
CHEROKEE	SC	45021	2.55
CHESTER	SC	45023	2.70
CHESTERFIELD	SC	45025	2.70
CLARENDON	SC	45027	2.80
COLLETON	SC	45029	3.10
DARLINGTON	SC	45031	2.80
DILLON	SC	45033	3.00
DORCHESTER	SC	45035	3.10
EDGEFIELD	SC	45037	2.80
FAIRFIELD	SC	45039	2.70
FLORENCE	SC	45041	3.00
GEORGETOWN	SC	45043	3.00
GREENVILLE	SC	45045	2.55
GREENWOOD	SC	45047	2.70
HAMPTON	SC	45049	3.20
HORRY	SC	45051	3.00
JASPER	SC	45053	3.20
KERSHAW	SC	45055	2.70
LANCASTER	SC	45057	2.70
LAURENS	SC	45059	2.55
LEE	SC	45061	2.80
LEXINGTON	SC	45063	2.80
MCCORMICK	SC	45065	2.80
MARION	SC	45067	3.00
MARLBORO	SC	45069	2.80
NEWBERRY	SC	45071	2.70
OCONEE	SC	45073	2.55
ORANGEBURG	SC	45075	2.80
PICKENS	SC	45077	2.55
RICHLAND	SC	45079	2.80
SALUDA	SC	45081	2.80
SPARTANBURG	SC	45083	2.55
SUMTER	SC	45085	2.80
UNION	SC	45087	2.55
WILLIAMSBURG	SC	45089	3.00
YORK	SC	45091	2.55
AURORA	SD	46003	1.50
BEADLE	SD	46005	1.50
BENNETT	SD	46007	1.40
BON HOMME	SD	46009	1.50
BROOKINGS	SD	46011	1.50
BROWN	SD	46013	1.40
BRULE	SD	46015	1.50
BUFFALO	SD	46017	1.40
BUTTE	SD	46019	1.40
CAMPBELL	SD	46021	1.40
CHARLES MIX	SD	46023	1.50
CLARK	SD	46025	1.50
CLAY	SD	46027	1.70
CODINGTON	SD	46029	1.50
CORSON	SD	46031	1.40
CUSTER	SD	46033	1.40

County/Parish/City	State	Fips__code	Class I differential adjusted for location
DAVISON	SD	46035	1.50
DAY	SD	46037	1.40
DEUEL	SD	46039	1.50
DEWEY	SD	46041	1.40
DOUGLAS	SD	46043	1.50
EDMUNDS	SD	46045	1.40
FALL RIVER	SD	46047	1.40
FAULK	SD	46049	1.40
GRANT	SD	46051	1.50
GREGORY	SD	46053	1.50
HAAKON	SD	46055	1.40
HAMLIN	SD	46057	1.50
HAND	SD	46059	1.40
HANSON	SD	46061	1.50
HARDING	SD	46063	1.40
HUGHES	SD	46065	1.40
HUTCHINSON	SD	46067	1.50
HYDE	SD	46069	1.40
JACKSON	SD	46071	1.40
JERAULD	SD	46073	1.50
JONES	SD	46075	1.40
KINGSBURY	SD	46077	1.50
LAKE	SD	46079	1.50
LAWRENCE	SD	46081	1.40
LINCOLN	SD	46083	1.60
LYMAN	SD	46085	1.40
MCCOOK	SD	46087	1.50
MCPHERSON	SD	46089	1.40
MARSHALL	SD	46091	1.40
MEADE	SD	46093	1.40
MELLETTE	SD	46095	1.40
MINER	SD	46097	1.50
MINNEHAHA	SD	46099	1.60
MOODY	SD	46101	1.50
PENNINGTON	SD	46103	1.40
PERKINS	SD	46105	1.40
POTTER	SD	46107	1.40
ROBERTS	SD	46109	1.50
SANBORN	SD	46111	1.50
SHANNON	SD	46113	1.40
SPINK	SD	46115	1.40
STANLEY	SD	46117	1.40
SULLY	SD	46119	1.40
TODD	SD	46121	1.40
TRIPP	SD	46123	1.40
TURNER	SD	46125	1.60
UNION	SD	46127	1.70
WALWORTH	SD	46129	1.40
YANKTON	SD	46135	1.60
ZIEBACH	SD	46137	1.40
ANDERSON	TN	47001	2.15
BEDFORD	TN	47003	2.05
BENTON	TN	47005	2.20
BLEDSOE	TN	47007	2.25
BLOUNT	TN	47009	2.25
BRADLEY	TN	47011	2.55
CAMPBELL	TN	47013	2.15
CANNON	TN	47015	2.05
CARROLL	TN	47017	2.50
CARTER	TN	47019	2.25
CHEATHAM	TN	47021	2.05
CHESTER	TN	47023	2.70
CLAIBORNE	TN	47025	2.15
CLAY	TN	47027	2.05
COCKE	TN	47029	2.25
COFFEE	TN	47031	2.05
CROCKETT	TN	47033	2.70
CUMBERLAND	TN	47035	2.15
DAVIDSON	TN	47037	2.05
DECATUR	TN	47039	2.20
DE KALB	TN	47041	2.05

County/Parish/City	State	Fips__code	Class I differential adjusted for location
DICKSON	TN	47043	2.20
DYER	TN	47045	2.50
FAYETTE	TN	47047	2.85
FENTRESS	TN	47049	2.15
FRANKLIN	TN	47051	2.25
GIBSON	TN	47053	2.50
GILES	TN	47055	2.20
GRAINGER	TN	47057	2.25
GREENE	TN	47059	2.25
GRUNDY	TN	47061	2.25
HAMBLEN	TN	47063	2.25
HAMILTON	TN	47065	2.55
HANCOCK	TN	47067	2.25
HARDEMAN	TN	47069	2.70
HARDIN	TN	47071	2.50
HAWKINS	TN	47073	2.25
HAYWOOD	TN	47075	2.70
HENDERSON	TN	47077	2.50
HENRY	TN	47079	2.30
HICKMAN	TN	47081	2.20
HOUSTON	TN	47083	2.20
HUMPHREYS	TN	47085	2.20
JACKSON	TN	47087	2.05
JEFFERSON	TN	47089	2.25
JOHNSON	TN	47091	2.25
KNOX	TN	47093	2.25
LAKE	TN	47095	2.30
LAUDERDALE	TN	47097	2.70
LAWRENCE	TN	47099	2.20
LEWIS	TN	47101	2.20
LINCOLN	TN	47103	2.25
LOUDON	TN	47105	2.25
MCMINN	TN	47107	2.55
MCNAIRY	TN	47109	2.70
MACON	TN	47111	2.05
MADISON	TN	47113	2.70
MARION	TN	47115	2.25
MARSHALL	TN	47117	2.05
MAURY	TN	47119	2.05
MEIGS	TN	47121	2.55
MONROE	TN	47123	2.55
MONTGOMERY	TN	47125	2.20
MOORE	TN	47127	2.25
MORGAN	TN	47129	2.15
OBION	TN	47131	2.30
OVERTON	TN	47133	2.15
PERRY	TN	47135	2.20
PICKETT	TN	47137	2.15
POLK	TN	47139	2.55
PUTNAM	TN	47141	2.15
RHEA	TN	47143	2.25
ROANE	TN	47145	2.25
ROBERTSON	TN	47147	2.05
RUTHERFORD	TN	47149	2.05
SCOTT	TN	47151	2.15
SEQUATCHIE	TN	47153	2.25
SEVIER	TN	47155	2.25
SHELBY	TN	47157	2.85
SMITH	TN	47159	2.05
STEWART	TN	47161	2.20
SULLIVAN	TN	47163	2.25
SUMNER	TN	47165	2.05
TIPTON	TN	47167	2.85
TROUSDALE	TN	47169	2.05
UNICOI	TN	47171	2.25
UNION	TN	47173	2.15
VAN BUREN	TN	47175	2.15
WARREN	TN	47177	2.05
WASHINGTON	TN	47179	2.25
WAYNE	TN	47181	2.20
WEAKLEY	TN	47183	2.30

County/Parish/City	State	Fips__code	Class I differential adjusted for location
WHITE	TN	47185	2.15
WILLIAMSON	TN	47187	2.05
WILSON	TN	47189	2.05
ANDERSON	TX	48001	2.35
ANDREWS	TX	48003	1.95
ANGELINA	TX	48005	2.65
ARANSAS	TX	48007	2.95
ARCHER	TX	48009	1.95
ARMSTRONG	TX	48011	1.95
ATASCOSA	TX	48013	2.75
AUSTIN	TX	48015	2.75
BAILEY	TX	48017	1.60
BANDERA	TX	48019	2.55
BASTROP	TX	48021	2.65
BAYLOR	TX	48023	1.95
BEE	TX	48025	2.95
BELL	TX	48027	2.35
BEXAR	TX	48029	2.65
BLANCO	TX	48031	2.55
BORDEN	TX	48033	2.10
BOSQUE	TX	48035	2.35
BOWIE	TX	48037	2.10
BRAZORIA	TX	48039	2.95
BRAZOS	TX	48041	2.65
BREWSTER	TX	48043	2.35
BRISCOE	TX	48045	1.95
BROOKS	TX	48047	3.15
BROWN	TX	48049	2.10
BURLESON	TX	48051	2.65
BURNET	TX	48053	2.35
CALDWELL	TX	48055	2.65
CALHOUN	TX	48057	2.95
CALLAHAN	TX	48059	2.10
CAMERON	TX	48061	3.15
CAMP	TX	48063	1.95
CARSON	TX	48065	1.95
CASS	TX	48067	2.10
CASTRO	TX	48069	1.60
CHAMBERS	TX	48071	2.95
CHEROKEE	TX	48073	2.35
CHILDRESS	TX	48075	1.95
CLAY	TX	48077	1.95
COCHRAN	TX	48079	1.60
COKE	TX	48081	2.10
COLEMAN	TX	48083	2.10
COLLIN	TX	48085	1.95
COLLINGSWORTH	TX	48087	1.95
COLORADO	TX	48089	2.75
COMAL	TX	48091	2.55
COMANCHE	TX	48093	2.10
CONCHO	TX	48095	2.10
COOKE	TX	48097	1.95
CORYELL	TX	48099	2.35
COTTLE	TX	48101	1.95
CRANE	TX	48103	2.10
CROCKETT	TX	48105	2.35
CROSBY	TX	48107	1.95
CULBERSON	TX	48109	1.95
DALLAM	TX	48111	1.90
DALLAS	TX	48113	2.10
DAWSON	TX	48115	1.95
DEAF SMITH	TX	48117	1.60
DELTA	TX	48119	1.95
DENTON	TX	48121	1.95
DE WITT	TX	48123	2.75
DICKENS	TX	48125	1.95
DIMMIT	TX	48127	2.75
DONLEY	TX	48129	1.95
DUVAL	TX	48131	2.95
EASTLAND	TX	48133	2.10
ECTOR	TX	48135	2.10

County/Parish/City	State	Fips__code	Class I differential adjusted for location
EDWARDS	TX	48137	2.35
ELLIS	TX	48139	2.10
EL PASO	TX	48141	1.75
ERATH	TX	48143	2.10
FALLS	TX	48145	2.35
FANNIN	TX	48147	1.95
FAYETTE	TX	48149	2.75
FISHER	TX	48151	2.10
FLOYD	TX	48153	1.95
FOARD	TX	48155	1.95
FORT BEND	TX	48157	2.95
FRANKLIN	TX	48159	1.95
FREESTONE	TX	48161	2.35
FRIO	TX	48163	2.75
GAINES	TX	48165	1.95
GALVESTON	TX	48167	2.95
GARZA	TX	48169	1.95
GILLESPIE	TX	48171	2.35
GLASSCOCK	TX	48173	2.10
GOLIAD	TX	48175	2.95
GONZALES	TX	48177	2.75
GRAY	TX	48179	1.95
GRAYSON	TX	48181	1.95
GREGG	TX	48183	2.10
GRIMES	TX	48185	2.75
GUADALUPE	TX	48187	2.65
HALE	TX	48189	1.95
HALL	TX	48191	1.95
HAMILTON	TX	48193	2.10
HANSFORD	TX	48195	1.90
HARDEMAN	TX	48197	1.95
HARDIN	TX	48199	2.95
HARRIS	TX	48201	2.95
HARRISON	TX	48203	2.10
HARTLEY	TX	48205	1.90
HASKELL	TX	48207	1.95
HAYS	TX	48209	2.55
HEMPHILL	TX	48211	1.90
HENDERSON	TX	48213	2.35
HIDALGO	TX	48215	3.15
HILL	TX	48217	2.35
HOCKLEY	TX	48219	1.95
HOOD	TX	48221	2.10
HOPKINS	TX	48223	1.95
HOUSTON	TX	48225	2.55
HOWARD	TX	48227	2.10
HUDSPETH	TX	48229	1.75
HUNT	TX	48231	1.95
HUTCHINSON	TX	48233	1.90
IRION	TX	48235	2.35
JACK	TX	48237	1.95
JACKSON	TX	48239	2.95
JASPER	TX	48241	2.75
JEFF DAVIS	TX	48243	2.10
JEFFERSON	TX	48245	2.95
JIM HOGG	TX	48247	2.95
JIM WELLS	TX	48249	2.95
JOHNSON	TX	48251	2.10
JONES	TX	48253	2.10
KARNES	TX	48255	2.75
KAUFMAN	TX	48257	2.10
KENDALL	TX	48259	2.55
KENEDY	TX	48261	3.15
KENT	TX	48263	2.10
KERR	TX	48265	2.55
KIMBLE	TX	48267	2.35
KING	TX	48269	1.95
KINNEY	TX	48271	2.65
KLEBERG	TX	48273	3.15
KNOX	TX	48275	1.95
LAMAR	TX	48277	1.95

County/Parish/City	State	Fips__code	Class I differential adjusted for location
LAMB	TX	48279	1.60
LAMPASAS	TX	48281	2.35
LA SALLE	TX	48283	2.75
LAVACA	TX	48285	2.75
LEE	TX	48287	2.65
LEON	TX	48289	2.55
LIBERTY	TX	48291	2.95
LIMESTONE	TX	48293	2.35
LIPSCOMB	TX	48295	1.90
LIVE OAK	TX	48297	2.95
LLANO	TX	48299	2.35
LOVING	TX	48301	1.95
LUBBOCK	TX	48303	1.95
LYNN	TX	48305	1.95
MCCULLOCH	TX	48307	2.10
MCLENNAN	TX	48309	2.35
MCMULLEN	TX	48311	2.75
MADISON	TX	48313	2.65
MARION	TX	48315	2.10
MARTIN	TX	48317	2.10
MASON	TX	48319	2.35
MATAGORDA	TX	48321	2.95
MAVERICK	TX	48323	2.65
MEDINA	TX	48325	2.65
MENARD	TX	48327	2.35
MIDLAND	TX	48329	2.10
MILAM	TX	48331	2.55
MILLS	TX	48333	2.10
MITCHELL	TX	48335	2.10
MONTAGUE	TX	48337	1.95
MONTGOMERY	TX	48339	2.95
MOORE	TX	48341	1.90
MORRIS	TX	48343	1.95
MOTLEY	TX	48345	1.95
NACOGDOCHES	TX	48347	2.55
NAVARRO	TX	48349	2.35
NEWTON	TX	48351	2.75
NOLAN	TX	48353	2.10
NUECES	TX	48355	3.15
OCHILTREE	TX	48357	1.90
OLDHAM	TX	48359	1.90
ORANGE	TX	48361	2.95
PALO PINTO	TX	48363	2.10
PANOLA	TX	48365	2.35
PARKER	TX	48367	2.10
PARMER	TX	48369	1.60
PECOS	TX	48371	2.35
POLK	TX	48373	2.75
POTTER	TX	48375	1.95
PRESIDIO	TX	48377	2.10
RAINS	TX	48379	1.95
RANDALL	TX	48381	1.95
REAGAN	TX	48383	2.35
REAL	TX	48385	2.55
RED RIVER	TX	48387	1.95
REEVES	TX	48389	2.10
REFUGIO	TX	48391	2.95
ROBERTS	TX	48393	1.90
ROBERTSON	TX	48395	2.55
ROCKWALL	TX	48397	1.95
RUNNELS	TX	48399	2.10
RUSK	TX	48401	2.35
SABINE	TX	48403	2.65
SAN AUGUSTINE	TX	48405	2.65
SAN JACINTO	TX	48407	2.75
SAN PATRICIO	TX	48409	2.95
SAN SABA	TX	48411	2.10
SCHLEICHER	TX	48413	2.35
SCURRY	TX	48415	2.10
SHACKELFORD	TX	48417	2.10
SHELBY	TX	48419	2.55

County/Parish/City	State	Fips__code	Class I differential adjusted for location
SHERMAN	TX	48421	1.90
SMITH	TX	48423	2.35
SOMERVELL	TX	48425	2.10
STARR	TX	48427	2.95
STEPHENS	TX	48429	2.10
STERLING	TX	48431	2.10
STONEWALL	TX	48433	2.10
SUTTON	TX	48435	2.35
SWISHER	TX	48437	1.95
TARRANT	TX	48439	2.10
TAYLOR	TX	48441	2.10
TERRELL	TX	48443	2.35
TERRY	TX	48445	1.95
THROCKMORTON	TX	48447	1.95
TITUS	TX	48449	1.95
TOM GREEN	TX	48451	2.10
TRAVIS	TX	48453	2.55
TRINITY	TX	48455	2.65
TYLER	TX	48457	2.75
UPSHUR	TX	48459	2.10
UPTON	TX	48461	2.35
UVALDE	TX	48463	2.65
VAL VERDE	TX	48465	2.35
VAN ZANDT	TX	48467	2.10
VICTORIA	TX	48469	2.95
WALKER	TX	48471	2.75
WALLER	TX	48473	2.75
WARD	TX	48475	2.10
WASHINGTON	TX	48477	2.75
WEBB	TX	48479	2.75
WHARTON	TX	48481	2.95
WHEELER	TX	48483	1.90
WICHITA	TX	48485	1.95
WILBARGER	TX	48487	1.95
WILLACY	TX	48489	3.15
WILLIAMSON	TX	48491	2.55
WILSON	TX	48493	2.75
WINKLER	TX	48495	1.95
WISE	TX	48497	1.95
WOOD	TX	48499	1.95
YOAKUM	TX	48501	1.95
YOUNG	TX	48503	1.95
ZAPATA	TX	48505	2.95
ZAVALA	TX	48507	2.65
BEAVER	UT	49001	1.50
BOX ELDER	UT	49003	1.50
CACHE	UT	49005	1.50
CARBON	UT	49007	1.80
DAGGETT	UT	49009	1.50
DAVIS	UT	49011	1.50
DUCHESNE	UT	49013	1.50
EMERY	UT	49015	1.80
GARFIELD	UT	49017	1.80
GRAND	UT	49019	1.90
IRON	UT	49021	1.80
JUAB	UT	49023	1.50
KANE	UT	49025	1.90
MILLARD	UT	49027	1.50
MORGAN	UT	49029	1.50
PIUTE	UT	49031	1.50
RICH	UT	49033	1.50
SALT LAKE	UT	49035	1.50
SAN JUAN	UT	49037	1.90
SANPETE	UT	49039	1.50
SEVIER	UT	49041	1.50
SUMMIT	UT	49043	1.50
TOOELE	UT	49045	1.50
UINTAH	UT	49047	1.80
UTAH	UT	49049	1.50
WASATCH	UT	49051	1.50
WASHINGTON	UT	49053	1.90

County/Parish/City	State	Fips__code	Class I differential adjusted for location
WAYNE	UT	49055	1.80
WEBER	UT	49057	1.50
ADDISON	VT	50001	2.05
BENNINGTON	VT	50003	2.15
CALEDONIA	VT	50005	1.95
CHITTENDEN	VT	50007	2.05
ESSEX	VT	50009	1.95
FRANKLIN	VT	50011	1.95
GRAND ISLE	VT	50013	1.95
LAMOILLE	VT	50015	1.95
ORANGE	VT	50017	2.05
ORLEANS	VT	50019	1.95
RUTLAND	VT	50021	2.05
WASHINGTON	VT	50023	2.05
WINDHAM	VT	50025	2.30
WINDSOR	VT	50027	2.15
ACCOMACK	VA	51001	2.10
ALBEMARLE	VA	51003	2.15
ALLEGHANY	VA	51005	2.15
AMELIA	VA	51007	2.20
AMHERST	VA	51009	2.15
APPOMATTOX	VA	51011	2.15
ARLINGTON	VA	51013	2.05
AUGUSTA	VA	51015	2.15
BATH	VA	51017	2.15
BEDFORD	VA	51019	2.15
BLAND	VA	51021	2.25
BOTETOURT	VA	51023	2.15
BRUNSWICK	VA	51025	2.35
BUCHANAN	VA	51027	2.25
BUCKINGHAM	VA	51029	2.15
CAMPBELL	VA	51031	2.15
CAROLINE	VA	51033	2.20
CARROLL	VA	51035	2.25
CHARLES CITY	VA	51036	2.20
CHARLOTTE	VA	51037	2.15
CHESTERFIELD	VA	51041	2.20
CLARKE	VA	51043	2.05
CRAIG	VA	51045	2.15
CULPEPER	VA	51047	2.05
CUMBERLAND	VA	51049	2.15
DICKENSON	VA	51051	2.25
DINWIDDIE	VA	51053	2.35
ESSEX	VA	51057	2.20
FAIRFAX	VA	51059	2.05
FAUQUIER	VA	51061	2.05
FLOYD	VA	51063	2.15
FLUVANNA	VA	51065	2.15
FRANKLIN	VA	51067	2.15
FREDERICK	VA	51069	2.05
GILES	VA	51071	2.15
GLOUCESTER	VA	51073	2.20
GOOCHLAND	VA	51075	2.20
GRAYSON	VA	51077	2.25
GREENE	VA	51079	2.15
GREENSVILLE	VA	51081	2.35
HALIFAX	VA	51083	2.35
HANOVER	VA	51085	2.20
HENRICO	VA	51087	2.20
HENRY	VA	51089	2.35
HIGHLAND	VA	51091	2.15
ISLE OF WIGHT	VA	51093	2.55
JAMES CITY	VA	51095	2.55
KING AND QUEEN	VA	51097	2.20
KING GEORGE	VA	51099	2.05
KING WILLIAM	VA	51101	2.20
LANCASTER	VA	51103	2.20
LEE	VA	51105	2.25
LOUDOUN	VA	51107	2.05
LOUISA	VA	51109	2.15
LUNENBURG	VA	51111	2.35

County/Parish/City	State	Fips__code	Class I differential adjusted for location
MADISON	VA	51113	2.15
MATHEWS	VA	51115	2.20
MECKLENBURG	VA	51117	2.35
MIDDLESEX	VA	51119	2.20
MONTGOMERY	VA	51121	2.15
NELSON	VA	51125	2.15
NEW KENT	VA	51127	2.20
NORTHAMPTON	VA	51131	2.10
NORTHUMBERLAND	VA	51133	2.20
NOTTOWAY	VA	51135	2.35
ORANGE	VA	51137	2.15
PAGE	VA	51139	2.05
PATRICK	VA	51141	2.35
PITTSYLVANIA	VA	51143	2.35
POWHATAN	VA	51145	2.20
PRINCE EDWARD	VA	51147	2.15
PRINCE GEORGE	VA	51149	2.35
PRINCE WILLIAM	VA	51153	2.05
PULASKI	VA	51155	2.15
RAPPAHANNOCK	VA	51157	2.05
RICHMOND	VA	51159	2.20
ROANOKE	VA	51161	2.15
ROCKBRIDGE	VA	51163	2.15
ROCKINGHAM	VA	51165	2.15
RUSSELL	VA	51167	2.25
SCOTT	VA	51169	2.25
SHENANDOAH	VA	51171	2.05
SMYTH	VA	51173	2.25
SOUTHAMPTON	VA	51175	2.55
SPOTSYLVANIA	VA	51177	2.15
STAFFORD	VA	51179	2.05
SURRY	VA	51181	2.55
SUSSEX	VA	51183	2.35
TAZEWELL	VA	51185	2.25
WARREN	VA	51187	2.05
WASHINGTON	VA	51191	2.25
WESTMORELAND	VA	51193	2.05
WISE	VA	51195	2.25
WYTHE	VA	51197	2.25
YORK	VA	51199	2.55
ALEXANDRIA CITY	VA	51510	2.05
BEDFORD CITY	VA	51515	2.15
BRISTOL CITY	VA	51520	2.25
BUENA VISTA CITY	VA	51530	2.15
CHARLOTTESVILLE CITY	VA	51540	2.15
CHESAPEAKE CITY	VA	51550	2.55
CLIFTON FORGE CITY	VA	51560	2.15
COLONIAL HEIGHTS CITY	VA	51570	2.30
COVINGTON CITY	VA	51580	2.15
DANVILLE CITY	VA	51590	2.35
EMPORIA CITY	VA	51595	2.35
FAIRFAX CITY	VA	51600	2.05
FALLS CHURCH CITY	VA	51610	2.05
FRANKLIN CITY	VA	51620	2.55
FREDERICKSBURG CITY	VA	51630	2.15
GALAX CITY	VA	51640	2.25
HAMPTON CITY	VA	51650	2.55
HARRISONBURG CITY	VA	51660	2.15
HOPEWELL CITY	VA	51670	2.35
LEXINGTON CITY	VA	51678	2.15
LYNCHBURG CITY	VA	51680	2.15
MANASSAS CITY	VA	51683	2.05
MANASSAS PARK CITY	VA	51685	2.05
MARTINSVILLE CITY	VA	51690	2.35
NEWPORT NEWS CITY	VA	51700	2.55
NORFOLK CITY	VA	51710	2.55
NORTON CITY	VA	51720	2.25
PETERSBURG CITY	VA	51730	2.35
POQUOSON CITY	VA	51735	2.55
PORTSMOUTH CITY	VA	51740	2.55
RADFORD CITY	VA	51750	2.15

County/Parish/City	State	Fips__code	Class I differential adjusted for location
RICHMOND CITY	VA	51760	2.20
ROANOKE CITY	VA	51770	2.15
SALEM CITY	VA	51775	2.15
STAUNTON CITY	VA	51790	2.15
SUFFOLK CITY	VA	51800	2.55
VIRGINIA BEACH CITY	VA	51810	2.55
WAYNESBORO CITY	VA	51820	2.15
WILLIAMSBURG CITY	VA	51830	2.55
WINCHESTER CITY	VA	51840	2.05
ADAMS	WA	53001	1.35
ASOTIN	WA	53003	1.35
BENTON	WA	53005	1.30
CHELAN	WA	53007	1.30
CLALLAM	WA	53009	1.45
CLARK	WA	53011	1.45
COLUMBIA	WA	53013	1.35
COWLITZ	WA	53015	1.45
DOUGLAS	WA	53017	1.30
FERRY	WA	53019	1.35
FRANKLIN	WA	53021	1.35
GARFIELD	WA	53023	1.35
GRANT	WA	53025	1.30
GRAYS HARBOR	WA	53027	1.45
ISLAND	WA	53029	1.45
JEFFERSON	WA	53031	1.45
KING	WA	53033	1.45
KITSAP	WA	53035	1.45
KITTITAS	WA	53037	1.30
KLICKITAT	WA	53039	1.30
LEWIS	WA	53041	1.45
LINCOLN	WA	53043	1.35
MASON	WA	53045	1.45
OKANOGAN	WA	53047	1.30
PACIFIC	WA	53049	1.45
PEND OREILLE	WA	53051	1.35
PIERCE	WA	53053	1.45
SAN JUAN	WA	53055	1.45
SKAGIT	WA	53057	1.20
SKAMANIA	WA	53059	1.45
SNOHOMISH	WA	53061	1.45
SPOKANE	WA	53063	1.35
STEVENS	WA	53065	1.35
THURSTON	WA	53067	1.45
WAHKIAKUM	WA	53069	1.45
WALLA WALLA	WA	53071	1.35
WHATCOM	WA	53073	1.20
WHITMAN	WA	53075	1.35
YAKIMA	WA	53077	1.30
BARBOUR	WV	54001	2.05
BERKELEY	WV	54003	2.05
BOONE	WV	54005	2.20
BRAXTON	WV	54007	2.20
BROOKE	WV	54009	1.95
CABELL	WV	54011	2.20
CALHOUN	WV	54013	2.05
CLAY	WV	54015	2.20
DODDRIDGE	WV	54017	2.05
FAYETTE	WV	54019	2.20
GILMER	WV	54021	2.05
GRANT	WV	54023	2.05
GREENBRIER	WV	54025	2.15
HAMPSHIRE	WV	54027	2.05
HANCOCK	WV	54029	1.95
HARDY	WV	54031	2.05
HARRISON	WV	54033	2.05
JACKSON	WV	54035	2.05
JEFFERSON	WV	54037	2.05
KANAWHA	WV	54039	2.20
LEWIS	WV	54041	2.05
LINCOLN	WV	54043	2.20
LOGAN	WV	54045	2.20

County/Parish/City	State	Fips__code	Class I differential adjusted for location
MCDOWELL	WV	54047	2.20
MARION	WV	54049	1.95
MARSHALL	WV	54051	1.95
MASON	WV	54053	2.05
MERCER	WV	54055	2.15
MINERAL	WV	54057	2.05
MINGO	WV	54059	2.20
MONONGALIA	WV	54061	1.95
MONROE	WV	54063	2.15
MORGAN	WV	54065	2.05
NICHOLAS	WV	54067	2.20
OHIO	WV	54069	1.95
PENDLETON	WV	54071	2.15
PLEASANTS	WV	54073	2.05
POCAHONTAS	WV	54075	2.15
PRESTON	WV	54077	1.95
PUTNAM	WV	54079	2.20
RALEIGH	WV	54081	2.20
RANDOLPH	WV	54083	2.05
RITCHIE	WV	54085	2.05
ROANE	WV	54087	2.20
SUMMERS	WV	54089	2.15
TAYLOR	WV	54091	1.95
TUCKER	WV	54093	2.05
TYLER	WV	54095	2.05
UPSHUR	WV	54097	2.05
WAYNE	WV	54099	2.20
WEBSTER	WV	54101	2.05
WETZEL	WV	54103	1.95
WIRT	WV	54105	2.05
WOOD	WV	54107	2.05
WYOMING	WV	54109	2.20
ADAMS	WI	55001	1.70
ASHLAND	WI	55003	1.60
BARRON	WI	55005	1.60
BAYFIELD	WI	55007	1.65
BROWN	WI	55009	1.80
BUFFALO	WI	55011	1.60
BURNETT	WI	55013	1.60
CALUMET	WI	55015	1.80
CHIPPEWA	WI	55017	1.60
CLARK	WI	55019	1.60
COLUMBIA	WI	55021	1.70
CRAWFORD	WI	55023	1.70
DANE	WI	55025	1.80
DODGE	WI	55027	1.80
DOOR	WI	55029	1.80
DOUGLAS	WI	55031	1.65
DUNN	WI	55033	1.60
EAU CLAIRE	WI	55035	1.60
FLORENCE	WI	55037	1.60
FOND DU LAC	WI	55039	1.80
FOREST	WI	55041	1.60
GRANT	WI	55043	1.80
GREEN	WI	55045	1.80
GREEN LAKE	WI	55047	1.70
IOWA	WI	55049	1.80
IRON	WI	55051	1.60
JACKSON	WI	55053	1.60
JEFFERSON	WI	55055	1.80
JUNEAU	WI	55057	1.70
KENOSHA	WI	55059	1.95
KEWAUNEE	WI	55061	1.80
LA CROSSE	WI	55063	1.60
LAFAYETTE	WI	55065	1.80
LANGLADE	WI	55067	1.60
LINCOLN	WI	55069	1.60
MANITOWOC	WI	55071	1.80
MARATHON	WI	55073	1.60
MARINETTE	WI	55075	1.60
MARQUETTE	WI	55077	1.70

County/Parish/City	State	Fips__code	Class I differential adjusted for location
MENOMINEE	WI	55078	1.70
MILWAUKEE	WI	55079	1.95
MONROE	WI	55081	1.60
OCONTO	WI	55083	1.70
ONEIDA	WI	55085	1.60
OUTAGAMIE	WI	55087	1.70
OZAUKEE	WI	55089	1.95
PEPIN	WI	55091	1.60
PIERCE	WI	55093	1.60
POLK	WI	55095	1.60
PORTAGE	WI	55097	1.60
PRICE	WI	55099	1.60
RACINE	WI	55101	1.95
RICHLAND	WI	55103	1.70
ROCK	WI	55105	1.80
RUSK	WI	55107	1.60
ST. CROIX	WI	55109	1.60
SAUK	WI	55111	1.70
SAWYER	WI	55113	1.60
SHAWANO	WI	55115	1.70
SHEBOYGAN	WI	55117	1.95
TAYLOR	WI	55119	1.60
TREMPEALEAU	WI	55121	1.60
VERNON	WI	55123	1.70
VILAS	WI	55125	1.60
WALWORTH	WI	55127	1.80
WASHBURN	WI	55129	1.60
WASHINGTON	WI	55131	1.80
WAUKESHA	WI	55133	1.80
WAUPACA	WI	55135	1.70
WAUSHARA	WI	55137	1.70
WINNEBAGO	WI	55139	1.70
WOOD	WI	55141	1.60
ALBANY	WY	56001	1.55
BIG HORN	WY	56003	1.40
CAMPBELL	WY	56005	1.40
CARBON	WY	56007	1.55
CONVERSE	WY	56009	1.40
CROOK	WY	56011	1.40
FREMONT	WY	56013	1.40
GOSHEN	WY	56015	1.40
HOT SPRINGS	WY	56017	1.40
JOHNSON	WY	56019	1.40
LARAMIE	WY	56021	1.55
LINCOLN	WY	56023	1.40
NATRONA	WY	56025	1.40
NIOBRARA	WY	56027	1.40
PARK	WY	56029	1.40
PLATTE	WY	56031	1.55
SHERIDAN	WY	56033	1.50
SUBLETTE	WY	56035	1.40
SWEETWATER	WY	56037	1.50
TETON	WY	56039	1.40
UINTA	WY	56041	1.50
WASHAKIE	WY	56043	1.40
WESTON	WY	56045	1.40

§ 1000.53 Announcement of class prices, component prices, and advanced pricing factors.

(a) On or before the 5th day of the month, the market administrator for each Federal milk marketing order shall announce the following prices (as applicable to that order) for the preceding month:

(1) The Class II price;

(2) The Class II butterfat price;

(3) The Class III price;

(4) The Class III skim milk price;

(5) The Class IV price;

(6) The Class IV skim milk price;

(7) The butterfat price;

(8) The nonfat solids price;

(9) The protein price;

(10) The other solids price; and

(11) The somatic cell adjustment rate.

(b) On or before the 23rd day of the month, the market administrator for each Federal milk marketing order shall announce the following prices and pricing factors for the following month:

(1) The Class I price;

(2) The Class I skim milk price;

(3) The Class I butterfat price;

(4) The Class II skim milk price;

(5) The Class II nonfat solids price; and

(6) The advanced pricing factors described in § 1000.50(q).

§ 1000.54 Equivalent price.

If for any reason a price or pricing constituent required for computing the prices described in § 1000.50 is not available, the market administrator shall use a price or pricing constituent determined by the Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to be equivalent to the price or pricing constituent that is required.

Subpart H—Payments for Milk

§ 1000.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the producer-settlement fund into which the market administrator shall deposit all payments made by handlers pursuant to §§ _____.71, _____.76, and _____.77 of each Federal milk order and out of which the market administrator shall make all payments pursuant to §§ _____.72 and _____.77 of each Federal milk order. Payments due any handler shall be offset by any payments due from that handler.

§ 1000.76 Payments by a handler operating a partially regulated distributing plant.

On or before the 25th day after the end of the month (except as provided in § 1000.90), the operator of a partially regulated distributing plant, other than a plant that is subject to marketwide pooling of producer returns under a State government's milk classification and pricing program, shall pay to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section or, if the handler submits the information specified in §§ _____.30(b) and _____.31(b) of the order, the handler may elect to pay the amount computed pursuant to paragraph (b) of this section. A partially regulated distributing plant that is subject to marketwide pooling of producer returns under a State government's milk classification and pricing program shall pay the amount computed pursuant to paragraph (c) of this section.

(a) The payment under this paragraph shall be an amount resulting from the following computations:

(1) From the plant's route disposition in the marketing area:

(i) Subtract receipts of fluid milk products classified as Class I milk from pool plants, plants fully regulated under other Federal orders, and handlers described in § 1000.9(c) and § 1135.11 of this chapter, except those receipts subtracted under a similar provision of another Federal milk order;

(ii) Subtract receipts of fluid milk products from another nonpool plant that is not a plant fully regulated under another Federal order to the extent that an equivalent amount of fluid milk products disposed of to the nonpool plant by handlers fully regulated under any Federal order is classified and priced as Class I milk and is not used as an offset for any payment obligation under any order; and

(iii) Subtract the pounds of reconstituted milk made from nonfluid milk products which are disposed of as route disposition in the marketing area;

(2) For orders with multiple component pricing, compute a Class I differential price by subtracting Class III price from the current month's Class I price. Multiply the pounds remaining after the computation in paragraph (a)(1)(iii) of this section by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant except that neither the adjusted Class I differential price nor the adjusted producer price differential shall be less than zero;

(3) For orders with skim milk and butterfat pricing, multiply the remaining pounds by the amount by which the Class I price exceeds the uniform price, both prices to be applicable at the location of the partially regulated distributing plant except that neither the adjusted Class I price nor the adjusted uniform price differential shall be less than the lowest announced class price; and

(4) Unless the payment option described in paragraph (d) is selected, add the amount obtained from multiplying the pounds of labeled reconstituted milk included in paragraph (a)(1)(iii) of this section by any positive difference between the Class I price applicable at the location of the partially regulated distributing plant (less $1.00 if the reconstituted milk is labeled as such) and the Class IV price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § _____.60 of the order for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the plant from a pool plant, a plant fully regulated under another Federal order, and handlers described in § 1000.9(c) and § 1135.11 of this chapter shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or a plant fully regulated under another Federal order shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from the pool plant and plants fully regulated under other Federal orders that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are in Class I and for which a value is computed pursuant to § _____.60 of the order for the partially regulated distributing plant shall be priced at the statistical uniform price or uniform price, whichever is applicable, of the respective order regulating the handling of milk at the receiving plant, with such statistical uniform price or uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest announced class price of the respective order); and

(iii) If the operator of the partially regulated distributing plant so requests, the handler's value of milk determined pursuant to § _____.60 of the order shall include a value of milk determined for each nonpool plant that is not a plant fully regulated under another Federal order which serves as a supply plant for the partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § _____. 7(c) of the order subject to the following conditions:

(A) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§ _____.30(b) and _____.31(b) of the order similar reports for each such nonpool supply plant;

(B) The operator of the nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at the plant which are made available if requested by the market administrator for verification purposes; and

(C) The value of milk determined pursuant to § _____.60 for the unregulated supply plant shall be determined in the same manner prescribed for computing the obligation of the partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk

computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments that were made for milk that would have been producer milk had the plant been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of the nonpool supply plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another Federal order under which the plant is also a partially regulated distributing plant and, if paragraph (b)(1)(iii) of this section applies, payments made by the operator of the nonpool supply plant to the producer-settlement fund of any order.

(c) The operator of a partially regulated distributing plant that is subject to marketwide pooling of returns under a milk classification and pricing program that is imposed under the authority of a State government shall pay on or before the 25th day after the end of the month (except as provided in § 1000.90) to the market administrator for the producer-settlement fund an amount computed as follows:

After completing the computations described in paragraphs (a)(1)(i) and (ii) of this section, determine the value of the remaining pounds of fluid milk products disposed of as route disposition in the marketing area by multiplying the hundredweight of such pounds by the amount, if greater than zero, that remains after subtracting the State program's class prices applicable to such products at the plant's location from the Federal order Class I price applicable at the location of the plant.

(d) Any handler may elect partially regulated distributing plant status for any plant with respect to receipts of nonfluid milk ingredients that are reconstituted for fluid use. Payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the nonfluid milk ingredients at the positive difference between the Class I price applicable under the other order at the location of the plant where the nonfluid milk ingredients were processed and the Class IV price. This payment option shall apply only if a majority of the total milk received at the plant that processed the nonfluid milk ingredients is regulated under one or more Federal orders and payment may only be made to the producer-settlement fund of the order pricing a plurality of the milk used to produce the nonfluid milk ingredients. This payment option shall not apply if the source of the nonfluid ingredients used in reconstituted fluid milk products cannot be determined by the market administrator.

§ 1000.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts, or other verification discloses errors resulting in money due the market administrator from a handler, or due a handler from the market administrator, or due a producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which the error(s) occurred.

§ 1000.78 Charges on overdue accounts.

Any unpaid obligation due the market administrator, producers, or cooperative associations from a handler pursuant to the provisions of the order shall be increased 1.0 percent each month beginning with the day following the date such obligation was due under the order. Any remaining amount due shall be increased at the same rate on the corresponding day of each succeeding month until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation and shall include any unpaid charges previously computed pursuant to this section. The late charges shall accrue to the administrative assessment fund. For the purpose of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

Subpart I—Administrative Assessment and Marketing Service Deduction

§ 1000.85 Assessment for order administration.

On or before the payment receipt date specified under § _____.71 of each Federal milk order each handler shall pay to the market administrator its pro rata share of the expense of administration of the order at a rate specified by the market administrator that is no more than 5 cents per hundredweight with respect to:

(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in § 1000.9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1000.9(c);

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1000.43(d) and other source milk allocated to Class I pursuant to § 1000.44(a) (3) and (8) and the corresponding steps of § 1000.44(b), except other source milk that is excluded from the computations pursuant to § _____.60 (d) and (e) of parts 1005, 1006, and 1007 of this chapter or § _____.60 (h) and (i) of parts 1001, 1030, 1032, 1033, 1124, 1126, 1131, and 1135 of this chapter; and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1000.76(a)(1) (i) and (ii).

§ 1000.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section, each handler in making payments to producers for milk (other than milk of such handler's own production) pursuant to § _____.73 of each Federal milk order shall deduct an amount specified by the market administrator that is no more than 7 cents per hundredweight and shall pay the amount deducted to the market administrator not later than the payment receipt date specified under § _____.71 of each Federal milk order. The money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and provide market information for producers who are not receiving such services from a cooperative association. The services shall be performed in whole or in part by the market administrator or an agent engaged by and responsible to the market administrator.

(b) In the case of producers for whom the market administrator has determined that a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make deductions from the payments to be made to producers as may be authorized by the membership agreement or marketing contract between the cooperative association and the producers. On or before the 15th day after the end of the month (except as provided in § 1000.90), such deductions shall be paid to the cooperative association rendering the services accompanied by a statement showing the amount of any deductions and the

amount of milk for which the deduction was computed for each producer. These deductions shall be made in lieu of the deduction specified in paragraph (a) of this section.

Subpart J—Miscellaneous Provisions

§ 1000.90 Dates.

If a date required for a payment contained in a Federal milk order falls on a Saturday, Sunday, or national holiday, such payment will be due on the next day that the market administrator's office is open for public business.

§ 1000.91 [Reserved]

§ 1000.92 [Reserved]

§ 1000.93 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of Title 44 U.S.C. chapter 35 and have been assigned OMB control number 0581–0032.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1001.1 General provisions.

Definitions

1001.2 Northeast marketing area.
1001.3 Route disposition.
1001.4 Plant.
1001.5 Distributing plant.
1001.6 Supply plant.
1001.7 Pool plant.
1001.8 Nonpool plant.
1001.9 Handler.
1001.10 Producer-handler.
1001.11 [Reserved]
1001.12 Producer.
1001.13 Producer milk.
1001.14 Other source milk.
1001.15 Fluid milk product.
1001.16 Fluid cream product.
1001.17 [Reserved]
1001.18 Cooperative association.
1001.19 Commercial food processing establishment.

Handler Reports

1001.30 Reports of receipts and utilization.
1001.31 Payroll reports.
1001.32 Other reports.

Classification of Milk

1001.40 Classes of utilization.
1001.41 [Reserved]
1001.42 Classification of transfers and diversions.
1001.43 General classification rules.
1001.44 Classification of producer milk.
1001.45 Market administrator's reports and announcements concerning classification.

Class Prices

1001.50 Class prices, component prices, and advanced pricing factors.
1001.51 Class I differential and price.
1001.52 Adjusted Class I differentials.
1001.53 Announcement of class prices, component prices, and advanced pricing factors.
1001.54 Equivalent price.

Producer Price Differential

1001.60 Handler's value of milk.
1001.61 Computation of producer price differential.
1001.62 Announcement of producer prices.

Payments for Milk

1001.70 Producer-settlement fund.
1001.71 Payments to the producer-settlement fund.
1001.72 Payments from the producer-settlement fund.
1001.73 Payments to producers and to cooperative associations.
1001.74 [Reserved]
1001.75 Plant location adjustments for producer milk and nonpool milk.
1001.76 Payments by a handler operating a partially regulated distributing plant.
1001.77 Adjustment of accounts.
1001.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1001.85 Assessment for order administration.
1001.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674, and 7253.

Subpart—Order Regulating Handling

General Provisions

§ 1001.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1001. In this part 1001, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1001.2 Northeast marketing area.

The marketing area means all the territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Connecticut, Delaware, Massachusetts, New Hampshire, New Jersey, Rhode Island, Vermont and District of Columbia

All of the States of Connecticut, Delaware, Massachusetts, New Hampshire, New Jersey, Rhode Island, Vermont and the District of Columbia.

Maryland Counties

All of the State of Maryland except the counties of Allegany and Garrett.

New York Counties, Cities, and Townships

All counties within the State of New York except Allegany, Cattaraugus, Chatauqua, Erie, Genessee, Livingston, Monroe, Niagara, Ontario, Orleans, Seneca, Wayne, and Wyoming; the townships of Conquest, Montezuma, Sterling and Victory in Cayuga County; the city of Hornell, and the townships of Avoca, Bath, Bradford, Canisteo, Cohocton, Dansville, Fremont, Pulteney, Hartsville, Hornellsville, Howard, Prattsburg, Urbana, Wayland, Wayne and Wheeler in Steuben County; and the townships of Italy, Middlesex, and Potter in Yates County.

Pennsylvania Counties

Adams, Bucks, Chester, Cumberland, Dauphin, Delaware, Franklin, Fulton, Juniata, Lancaster, Lebanon, Montgomery, Perry, Philadelphia, and York.

Virginia Counties and Cities

Arlington, Fairfax, Loudoun, and Prince William, and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

§ 1001.3 Route disposition.

See § 1000.3.

§ 1001.4 Plant.

(a) Except as provided in paragraph (b) of this section, plant means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products are received, processed, or packaged, including a facility described in paragraph (b)(2) of this section if the facility receives the milk of more than one dairy farmer.

(b) Plant shall not include:

(1) A separate building without stationary storage tanks that is used only as a reload point for transferring bulk milk from one tank truck to another or a separate building used only as a distribution point for storing packaged fluid milk products in transit for route disposition;

(2) An on-farm facility operated as part of a single dairy farm entity for the separation of cream and skim milk or the removal of water from milk; or

(3) Bulk reload points where milk is transferred from one tank truck to another while en route from dairy farmers' farms to a plant. If stationary storage tanks are used for transferring milk at the premises, the operator of the facility shall make an advance written request to the market administrator that the facility shall be treated as a reload point. The cooling of milk, collection of samples, and washing and sanitizing of

tank trucks at the premises shall not disqualify it as a bulk reload point.

§ 1001.5 Distributing plant.

See § 1000.5.

§ 1001.6 Supply plant.

See § 1000.6.

§ 1001.7 Pool plant.

Pool plant means a plant, unit of plants, or system of plants as specified in paragraphs (a) through (f) of this section, but excluding a plant described in paragraph (h) of this section. The pooling standards described in paragraphs (c) and (f) of this section are subject to modification pursuant to paragraph (g) of this section.

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or § _____.7(b) of any other Federal milk order, from which during the month 25 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 25 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which fluid milk products are transferred or diverted to plants described in paragraph (a) or (b) of this section subject to the additional conditions described in this paragraph. In the case of a supply plant operated by a cooperative association handler described in § 1000.9(c), fluid milk products that the cooperative delivers to pool plants directly from producers' farms shall be treated as if transferred from the cooperative association's plant for the purpose of meeting the shipping requirements of this paragraph.

(1) During the months of August and December, such shipments must equal not less than 10 percent of the total quantity of milk that is received at the plant or diverted from it pursuant to § 1001.13 during the month;

(2) During the months of September through November, such shipments must equal not less than 20 percent of the total quantity of milk that is received at the plant or diverted from it pursuant to § 1001.13 during the month;

(3) A plant which meets the shipping requirements of this paragraph during each of the months of August through December shall be a pool plant during the following months of January through July unless the milk received at the plant fails to meet the requirements of a duly constituted regulatory agency, the plant fails to meet a shipping requirement instituted pursuant to paragraph (f) of this section, or the plant operator requests nonpool status for the plant. The shipping requirement for any plant which has not met the requirements of paragraphs (c)(1) and (c)(2) of this section must equal not less than 10 percent of the total quantity of milk that is received at the plant or diverted from it pursuant to § 1001.13 during each of the months of January through July in order for the plant to be a pool plant in each of those months;

(4) If milk is delivered directly from producers' farms that are located outside of the states included in the marketing area or outside Maine or West Virginia, such producers must be grouped by state into reporting units and each reporting unit must independently meet the shipping requirements of this paragraph; and

(5) Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the percentages in paragraphs (c)(1) and (2) of this section.

(d) [Reserved]

(e) Two or more plants that are located in the marketing area and operated by the same handler may qualify as a unit by meeting the total and in-area route distribution requirements specified in paragraph (a) of this section subject to the following additional requirements:

(1) At least one of the plants in the unit qualifies as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit; and

(3) A written request to form a unit, or to add or remove plants from a unit, or to cancel a unit, must be filed with the market administrator prior to the first day of the month for which unit formation is to be effective.

(f) Two or more supply plants operated by the same handler, or by one or more cooperative associations, may qualify for pooling as a system of plants by meeting the applicable percentage requirements of paragraph (c) of this section in the same manner as a single plant subject to the following additional requirements:

(1) A supply plant system will be effective for the period of August 1 through July 31 of the following year. Written notification must be given to the market administrator listing the plants to be included in the system prior to the first day of July preceding the effective date of the system. The plants included in the system shall be listed in the sequence in which they shall qualify for pool plant status based on the minimum deliveries required. If the deliveries made are insufficient to qualify the entire system for pooling, the last listed plant shall be excluded from the system, followed by the plant next-to-last on the list, and continuing in this sequence until remaining listed plants have met the minimum shipping requirements; and

(2) Each plant that qualifies as a pool plant within a system shall continue each month as a plant in the system through the following July unless the plant subsequently fails to qualify for pooling, the handler submits a written notification to the market administrator prior to the first day of the month that the plant be deleted from the system, or that the system be discontinued. Any plant that has been so deleted from the system, or that has failed to qualify as a pool plant in any month, will not be part of the system for the remaining months through July. For any system that qualifies in August, no plant may be added in any subsequent month through the following July unless the plant replaces another plant in the system that has ceased operations and the market administrator is notified of such replacement prior to the first day of the month for which it is to be effective.

(g) The applicable shipping percentages of paragraphs (c) and (f) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator

shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section that is located within the marketing area if the plant also meets the pooling requirements of another Federal order and more than 50 percent of its route distribution has been in such other Federal order marketing area for 3 consecutive months;

(4) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant qualified pursuant to paragraph (a) of this section that is located in another Federal order marketing area if the plant meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under the order in this part, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a pool plant designated as a ''nonpool plant'' that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in writing by the handler and must be approved by the market administrator.

§ 1001.8 Nonpool plant.

See § 1000.8.

§ 1001.9 Handler.

See § 1000.9.

§ 1001.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area during the month;

(b) Receives milk solely from own farm production or receives milk that is fully subject to the pricing and pooling provisions of this or any other Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler's own enterprise and at its own risk.

§ 1001.11 [Reserved]

§ 1001.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1001.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include a dairy farmer described in paragraphs (b)(1) through (6) of this section. A dairy farmer described in paragraphs (b)(5) or (6) of this section shall be known as a *dairy farmer for other markets.*

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1001.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I;

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order;

(5) For any month of December through June, any dairy farmer whose milk is received at a pool plant or by a cooperative association handler described in § 1000.9(c) if the pool plant operator or the cooperative association caused milk from the same farm to be delivered to any plant as other than producer milk, as defined under the order in this part or any other Federal milk order, during the same month, either of the 2 preceding months, or during any of the preceding months of July through November; and

(6) For any month of July through November, any dairy farmer whose milk is received at a pool plant or by a cooperative association handler described in § 1000.9(c) if the pool plant operator or the cooperative association caused milk from the same farm to be delivered to any plant as other than producer milk, as defined under the order in this part or any other Federal milk order, during the same month.

§ 1001.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk) and butterfat contained in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or from a handler described in § 1000.9(c). Any milk which is picked up from the producer's farm in a tank truck under the control of the operator of a pool plant or a handler described in § 1000.9(c) but which is not received at a plant until the following month shall be considered as having been received by the handler during the month in which it is picked up at the farm. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by the operator of a pool plant or a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants subject to the following conditions:

(1) The producers whose farms are outside of the states included in the marketing area and outside the states of Maine or West Virginia shall be organized into state units and each such unit shall be reported separately; and

(2) For pooling purposes, each reporting unit must satisfy the shipping standards specified for a supply plant pursuant to § 1001.7(c);

(c) Diverted by a proprietary pool plant operator to another pool plant.

Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or by a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless milk of such dairy farmer was physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant; and

(2) Diverted milk shall be priced at the location of the plant to which diverted.

§ 1001.14 Other source milk.

See § 1000.14.

§ 1001.15 Fluid milk product.

See § 1000.15.

§ 1001.16 Fluid cream product.

See § 1000.16.

§ 1001.17 [Reserved]

§ 1001.18 Cooperative association.

See § 1000.18.

§ 1001.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1001.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 9th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) Each pool plant operator shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and pounds of nonfat solids other than protein (other solids) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c); and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, and other nonfat solids as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, and the pounds of solids-not-fat other than protein (other solids) contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

(d) Each handler not specified in paragraph (a) or (b) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1001.31 Payroll reports.

(a) On or before the 22nd day after the end of each month, each handler that operates a pool plant pursuant to § 1001.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in detail prescribed by the market administrator, showing for each producer the information specified in § 1001.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1001.32 Other reports.

In addition to the reports required pursuant to §§ 1001.30 and 1001.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1001.40 Classes of utilization.

See § 1000.40.

§ 1001.41 [Reserved]

§ 1001.42 Classification of transfers and diversions.

See § 1000.42.

§ 1001.43 General classification rules.

See § 1000.43.

§ 1001.44 Classification of producer milk.

See § 1000.44.

§ 1001.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1001.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1001.51 Class I differential and price.

The Class I differential shall be the differential established for Suffolk County, Massachusetts, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Suffolk County, Massachusetts.

§ 1001.52 Adjusted Class I differentials.

See § 1000.52.

§ 1001.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1001.54 Equivalent price.

See § 1000.54.

Producer Price Differential

§ 1001.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (h) of this section and subtracting from that total amount the value computed in paragraph (i) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a),

(b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value. (1) Multiply the pounds of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) Class II value. (1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value. (1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value. (1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding step of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(f) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(g) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(i) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1001.61 Computation of producer price differential.

For each month, the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1001.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions in this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1001.60 for all handlers required to file reports prescribed in § 1001.30;

(b) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1001.60 by the protein price, other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1001.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1001.60(h); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result, rounded to the nearest cent, shall be known as the *producer price differential* for the month.

§ 1001.62 Announcement of producer prices.

On or before the 13th day after the end of the month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1001.70 Producer-settlement fund.

See § 1000.70.

§ 1001.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 15th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1001.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price

differential as adjusted pursuant to § 1001.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively; and

(3) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1001.60(h) by the producer price differential as adjusted pursuant to § 1001.75 for the location of the plant from which received.

§ 1001.72 Payments from the producer-settlement fund.

No later than the 16th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1001.71(b) exceeds the amount computed pursuant to § 1001.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1001.73 Payments to producers and to cooperative associations.

(a) Each pool plant operator that is not paying a cooperative association for producer milk shall pay each producer as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 23rd day of the month, payment shall be made so that it is received by the producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the day after the payment date required in § 1001.72 in an amount computed as follows:

(i) Multiply the hundredweight of producer milk received by the producer price differential for the month as adjusted pursuant to § 1001.75;

(ii) Multiply the pounds of butterfat received by the butterfat price for the month;

(iii) Multiply the pounds of protein received by the protein price for the month;

(iv) Multiply the pounds of other solids received by the other solids price for the month; and

(v) Add the amounts computed in paragraphs (a)(2)(i) through (iv) of this section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) One day before partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by the lowest announced class price for the preceding month.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk milk/skimmed milk products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* Following the classification of bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment for such receipts shall be determined as follows:

(i) Multiply the hundredweight of Class I skim milk by the Class I skim milk price for the month at the receiving plant;

(ii) Multiply the pounds of Class I butterfat by the Class I butterfat price for the month at the receiving plant;

(iii) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iv) Multiply the pounds of butterfat in Class II times the Class II butterfat price;

(v) Multiply the pounds of nonfat solids in Class IV milk by the nonfat solids price for the month;

(vi) Multiply the pounds of butterfat in Class III and IV milk by the butterfat price for the month;

(vii) Multiply the pounds of protein in Class III milk by the protein price for the month;

(viii) Multiply the pounds of other solids in Class III milk by the other solids price for the month; and

(ix) Add together the amounts computed in paragraphs (b)(3)(i) through (viii) of this section and from that sum deduct any payment made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1001.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was

received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The minimum rate or rates at which payment to the producer is required pursuant to the order in this part;

(5) The rate used in making payment if the rate is other than the applicable minimum rate;

(6) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(7) The net amount of payment to the producer or cooperative association.

§ 1001.74 [Reserved]

§ 1001.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1001.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1001.73 and 1000.76.

§ 1001.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1001.77 Adjustment of accounts.

See § 1000.77.

§ 1001.78 Charges on overdue accounts.

See § 1000.78.

Administrative Assessment and Marketing Service Deduction

§ 1001.85 Assessment for order administration.

See § 1000.85.

§ 1001.86 Deduction for marketing services.

See § 1000.86.

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1005.1 General provisions.

Definitions

1005.2 Appalachian marketing area.
1005.3 Route disposition.
1005.4 Plant.
1005.5 Distributing plant.
1005.6 Supply plant.
1005.7 Pool plant.
1005.8 Nonpool plant.
1005.9 Handler.
1005.10 Producer-handler.
1005.11 [Reserved]
1005.12 Producer.
1005.13 Producer milk.
1005.14 Other source milk.
1005.15 Fluid milk product.
1005.16 Fluid cream product.
1005.17 [Reserved]
1005.18 Cooperative association.
1005.19 Commercial food processing establishment.

Handler Reports

1005.30 Reports of receipts and utilization.
1005.31 Payroll reports.
1005.32 Other reports.

Classification of Milk

1005.40 Classes of utilization.
1005.41 [Reserved]
1005.42 Classification of transfers and diversions.
1005.43 General classification rules.
1005.44 Classification of producer milk.
1005.45 Market administrator's reports and announcements concerning classification.

Class Prices

1005.50 Class prices, component prices, and advanced pricing factors.
1005.51 Class I differential and price.
1005.52 Adjusted Class I differentials.
1005.53 Announcement of class prices, component prices, and advanced pricing factors.
1005.54 Equivalent price.

Uniform Prices

1005.60 Handler's value of milk.
1005.61 Computation of uniform prices.
1005.62 Announcement of uniform prices.

Payments for Milk

1005.70 Producer-settlement fund.
1005.71 Payments to the producer-settlement fund.
1005.72 Payments from the producer-settlement fund.
1005.73 Payments to producers and to cooperative associations.
1005.74 [Reserved]
1005.75 Plant location adjustments for producer milk and nonpool milk.
1005.76 Payments by a handler operating a partially regulated distributing plant.
1005.77 Adjustment of accounts.
1005.78 Charges on overdue accounts.

Marketwide Service Payments

1005.80 Transportation credit balancing fund.
1005.81 Payments to the transportation credit balancing fund.
1005.82 Payments from the transportation credit balancing fund.

Administrative Assessment and Marketing Service Deduction

1005.85 Assessment for order administration.
1005.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674, and 7253.

Subpart—Order Regulating Handling

General Provisions

§ 1005.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1005. In this part 1005, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1005.2 Appalachian marketing area.

The marketing area means all the territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Georgia Counties

Catoosa, Chattooga, Dade, Fannin, Murray, Walker, and Whitfield.

Indiana Counties

Clark, Crawford, Daviess, Dubois, Floyd, Gibson, Greene, Harrison, Knox, Martin, Orange, Perry, Pike, Posey, Scott, Spencer, Sullivan, Vanderburgh, Warrick, and Washington.

Kentucky Counties

Adair, Anderson, Bath, Bell, Bourbon, Boyle, Breathitt, Breckinridge, Bullitt, Butler, Carroll, Carter, Casey, Clark, Clay, Clinton, Cumberland, Daviess, Edmonson, Elliott, Estill, Fayette, Fleming, Franklin, Gallatin, Garrard, Grayson, Green, Hancock, Hardin, Harlan, Hart, Henderson, Henry, Hopkins, Jackson, Jefferson, Jessamine, Knott, Knox, Larue, Laurel, Lee, Leslie, Letcher, Lincoln, Madison, Marion, McCreary, McLean, Meade, Menifee, Mercer, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Oldham, Owen, Owsley, Perry, Powell, Pulaski, Rockcastle, Rowan, Russell, Scott, Shelby, Spencer, Taylor, Trimble, Union, Washington, Wayne, Webster, Whitley, Wolfe, and Woodford.

North Carolina and South Carolina

All of the States of North Carolina and South Carolina.

Tennessee Counties

Anderson, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Cumberland, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, and Washington.

Virginia Counties and Cities

Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, Washington, and Wise; and the cities of Bristol and Norton.

West Virginia Counties

McDowell and Mercer.

§ 1005.3 Route disposition.

See § 1000.3.

§ 1005.4 Plant.

See § 1000.4.

§ 1005.5 Distributing plant.

See § 1000.5.

§ 1005.6 Supply plant.

See § 1000.6.

§ 1005.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, or a unit of plants as specified in paragraph (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or § _____.7(b) of any other Federal milk order, from which during the month 50 percent or more of the fluid milk products physically received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 50 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which 50 percent or more of the total quantity of milk that is physically received during the month from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted from the plant, is transferred to pool distributing plants. Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage.

(d) A plant located within the marketing area or in the State of Virginia that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month at least 60 percent of the producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) from the cooperative's plant.

(e) Two or more plants operated by the same handler and that are located within the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements specified in paragraph (a) of this section and the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit, or to add or remove plants from a unit, must be filed with the market administrator prior to the first day of the month for which it is to be effective.

(f) The applicable shipping percentages of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the date for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area, meets the pooling requirements of another Federal order, and has had greater route disposition in such other Federal order marketing area for 3 consecutive months;

(4) A plant qualified pursuant to paragraph (a) of this section which is located in another Federal order marketing area, meets the pooling standards of the other Federal order, and has not had a majority of its route disposition in this marketing area for 3 consecutive months or is locked into pool status under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(5) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under such other order than are made to plants regulated under the order in this part, or such plant has automatic pooling status under such other order; and

(6) That portion of a pool plant designated as a ''nonpool plant'' that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in writing by the handler and must be approved by the market administrator.

§ 1005.8 Nonpool plant.

See § 1000.8.

§ 1005.9 Handler.

See § 1000.9.

§ 1005.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area;

(b) Receives no fluid milk products, and acquires no fluid milk products for route disposition, from sources other than own farm production;

(c) Disposes of no other source milk as Class I milk except by increasing the

nonfat milk solids content of the fluid milk products received from own farm production; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled, and the processing and packaging operations are the producer-handler's own enterprise and are operated at the producer-handler's own risk.

§ 1005.11 [Reserved]

§ 1005.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1005.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1005.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1005.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk) and butterfat contained in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) In any month of July through December, not less than 6 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) In any month of January through June, not less than 2 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 25 percent during the months of July through November, January, and February, and 40 percent during the months of December and March through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 25 percent during the months of July through November, January, and February, and 40 percent during the months of December and March through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1005.7(d)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c);

(5) Any milk diverted in excess of the limits prescribed in paragraphs (d)(3) and (4) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that will not be producer milk, no milk diverted by the handler or cooperative association shall be producer milk;

(6) Diverted milk shall be priced at the location of the plant to which diverted; and

(7) The delivery day requirements and the diversion percentages in paragraphs (d)(1) through (4) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1005.14 Other source milk.

See § 1000.14.

§ 1005.15 Fluid milk product.

See § 1000.15.

§ 1005.16 Fluid cream product.

See § 1000.16.

§ 1005.17 [Reserved]

§ 1005.18 Cooperative association.

See § 1000.18.

§ 1005.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1005.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) With respect to each of its pool plants, the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c);

(2) Receipts of milk from handlers described in § 1000.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Order 1007, for which a transportation credit is requested pursuant to § 1005.82;

(6) Receipts of producer milk described in § 1005.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to that paragraph and the date that such milk was received;

(7) For handlers submitting transportation credit requests, transfers of bulk milk to nonpool plants, including the dates that such milk was transferred;

(8) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products; and

(9) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts; and

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1005.82, all of the information required in paragraphs (a)(5), (a)(6), and (a)(7) of this section.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1005.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1005.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in detail prescribed by the market administrator, showing for each producer the information specified in § 1005.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1005.32 Other reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1000.9(a) and (c) shall report to the market administrator any adjustments to transportation credit requests as reported pursuant to § 1005.30(a)(5), (6), and (7).

(b) In addition to the reports required pursuant to §§ 1005.30, 1005.31, and 1005.32(a), each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1005.40 Classes of utilization.

See § 1000.40.

§ 1005.41 [Reserved]

§ 1005.42 Classification of transfers and diversions.

See § 1000.42.

§ 1005.43 General classification rules.

See § 1000.43.

§ 1005.44 Classification of producer milk.

See § 1000.44.

§ 1005.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1005.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1005.51 Class I differential and price.

The Class I differential shall be the differential established for Mecklenburg County, North Carolina, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Mecklenburg County, North Carolina.

§ 1005.52 Adjusted Class I differentials.

See § 1000.52.

§ 1005.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1005.54 Equivalent price.

See § 1000.54.

Uniform Prices

§ 1005.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (e) of this section and subtracting from that total amount the value computed in paragraph (f) of this section. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts;

(b) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(c) Multiply the difference between the Class IV price for the preceding month and the current month's Class I, II, or III price, as the case may be, by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(d) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(e) Multiply the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(f) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are

allocated to Class I use pursuant to § 1000.43(d).

§ 1005.61 Computation of uniform prices.

On or before the 11th day of each month, the market administrator shall compute a uniform butterfat price, a uniform skim milk price, and a uniform price for producer milk receipts reported for the prior month. The report of any handler who has not made payments required pursuant to § 1005.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations.

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices and dividing the sum of such values by the total pounds of such butterfat.

(b) *Uniform skim milk price.* The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Combine into one total the values computed pursuant to § 1005.60 for all handlers;

(2) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1005.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the pounds of butterfat by the butterfat price computed in paragraph (a) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1005.60(e); and

(6) Subtract not less than 4 cents and not more than 5 cents.

(c) *Uniform price.* The uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

§ 1005.62 Announcement of uniform prices.

On or before the 11th day after the end of the month, the market administrator shall announce the uniform prices for the month computed pursuant to § 1005.61.

Payments for Milk

§ 1005.70 Producer-settlement fund.

See § 1000.70.

§ 1005.71 Payments to the producer-settlement fund.

Each handler shall make a payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 12th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk of the handler for the month as determined pursuant to § 1005.60; and

(b) The sum of the value at the uniform prices for skim milk and butterfat, adjusted for plant location, of the handler's receipts of producer milk; and the value at the uniform price, as adjusted pursuant to § 1005.75, applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1005.60(e).

§ 1005.72 Payments from the producer-settlement fund.

No later than one day after the date of payment receipt required under § 1005.71, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1005.71(b) exceeds the amount computed pursuant to § 1005.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1005.73 Payments to producers and to cooperative associations.

(a) Each pool plant operator that is not paying a cooperative association for producer milk shall pay each producer as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 23rd day of the month, payment shall be made so that it is received by the producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month at not less than 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1005.75 and proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, a payment computed as follows shall be made so that it is received by each producer one day after the payment date required in § 1005.72:

(i) Multiply the hundredweight of producer skim milk received times the uniform skim milk price for the month;

(ii) Multiply the pounds of butterfat received times the uniform butterfat price for the month;

(iii) Multiply the hundredweight of producer milk received times the plant location adjustment pursuant to § 1005.75; and

(iv) Add the amounts computed in paragraph (a)(2)(i), (ii), and (iii) of this section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) One day before partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1005.75.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of

the milk using the most recent class prices available for skim milk and butterfat at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment shall be the classified value of such milk as determined by multiplying the pounds of skim milk and butterfat assigned to each class pursuant to § 1000.44 by the class prices for the month at the receiving plant's location, and subtracting from this sum the partial payment made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1005.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association described in § 1000.9(a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

(3) The total pounds of butterfat in the producer's milk;

(4) The minimum rate or rates at which payment to the producer is required pursuant to the order in this part;

(5) The rate used in making payment if the rate is other than the applicable minimum rate;

(6) The amount, or rate per hundredweight, and nature of each deduction claimed by the handler; and

(7) The net amount of payment to the producer or cooperative association.

§ 1005.74 [Reserved]

§ 1005.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1005.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1005.73 and 1000.76.

§ 1005.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1005.77 Adjustment of accounts.

See § 1000.77.

§ 1005.78 Charges on overdue accounts.

See § 1000.78.

Marketwide Service Payments

§ 1005.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the *Transportation Credit Balancing Fund* into which shall be deposited the payments made by handlers pursuant to § 1005.81 and out of which shall be made the payments due handlers pursuant to § 1005.82. Payments due a handler shall be offset against payments due from the handler.

§ 1005.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.44 by $0.065 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June–January period. In the event that during any month of the June–January period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 5th day of the month (except as provided in § 1000.90) the assessment pursuant to paragraph (a) of this section for the following month.

§ 1005.82 Payments from the transportation credit balancing fund.

(a) Payments from the transportation credit balancing fund to handlers and cooperative associations requesting transportation credits shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90) after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1005.30(a)(5), bulk milk transferred from a plant fully regulated under another Federal order as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1005.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments prorata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section.

(2) The market administrator shall accept adjusted requests for transportation credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1005.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of transportation credit payments for the preceding month pursuant to paragraph (a) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the transportation credit balancing fund will be made on or before the next payment date for the following month.

(3) Transportation credits paid pursuant to paragraphs (a)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77. Adjusted payments to or from the transportation credit balancing fund will remain subject to the final proration established pursuant to paragraph (a)(2) of this section.

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1005.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to the months of January and June if a written request to do so is received 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) Transportation credits shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Order 1007, and allocated to Class I milk pursuant to § 1000.44(a)(9); and

(2) Bulk milk received directly from the farms of dairy farmers at pool distributing plants subject to the following conditions:

(i) The quantity of such milk that shall be eligible for the transportation credit shall be determined by multiplying the total pounds of milk received from producers meeting the conditions of this paragraph by the lower of:

(A) The marketwide estimated Class I utilization of all handlers for the month pursuant to § 1000.45(a); or

(B) The Class I utilization of all producer milk of the pool plant operator receiving the milk after the computations described in § 1000.44;

(ii) The dairy farmer was not a ''producer'' under this order during more than 2 of the immediately preceding months of February through May and not more than 50 percent of the production of the dairy farmer during those 2 months, in aggregate, was received as producer milk under this order during those 2 months; and

(iii) The farm on which the milk was produced is not located within the specified marketing area of the order in this part or the marketing area of Federal Order 1007 (7 CFR part 1007).

(d) Transportation credits shall be computed as follows:

(1) The market administrator shall subtract from the pounds of milk described in paragraphs (c)(1) and (2) of this section the pounds of bulk milk transferred from the pool plant receiving the supplemental milk if milk was transferred to a nonpool plant on the same calendar day that the supplemental milk was received. For this purpose, the transferred milk shall be subtracted from the most distant load of supplemental milk received, and then in sequence with the next most distant load until all of the transfers have been offset.

(2) With respect to the pounds of milk described in paragraph (c)(1) of this section that remain after the computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the shipping plant and the receiving plant;

(ii) Multiply the number of miles so determined by 0.35 cent;

(iii) Subtract the applicable Class I differential in § 1000.52 for the county in which the shipping plant is located from the Class I differential applicable for the county in which the receiving plant is located;

(iv) Subtract any positive difference computed in paragraph (d)(2)(iii) of this section from the amount computed in paragraph (d)(2)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(2)(iv) of this section by the hundredweight of milk described in paragraph (d)(2) of this section.

(3) For the remaining milk described in paragraph (c)(2) of this section after computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine an origination point for each load of milk by locating the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant;

(ii) Determine the shortest hard-surface highway distance between the receiving pool plant and the origination point;

(iii) Subtract 85 miles from the mileage so determined;

(iv) Multiply the remaining miles so computed by 0.35 cent;

(v) Subtract the Class I differential specified in § 1000.52 applicable for the county in which the origination point is located from the Class I differential applicable at the receiving pool plant's location;

(vi) Subtract any positive difference computed in paragraph (d)(3)(v) of this section from the amount computed in paragraph (d)(3)(iv) of this section; and

(vii) Multiply the remainder computed in paragraph (d)(3)(vi) of this section by the hundredweight of milk described in paragraph (d)(3) of this section.

Administrative Assessment and Marketing Service Deduction

§ 1005.85 Assessment for order administration.

See § 1000.85.

§ 1005.86 Deduction for marketing services.

See § 1000.86.

PART 1006—MILK IN THE FLORIDA MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1006.1 General provisions.

Definitions

1006.2 Florida marketing area.
1006.3 Route disposition.
1006.4 Plant.
1006.5 Distributing plant.
1006.6 Supply plant.
1006.7 Pool plant.
1006.8 Nonpool plant.
1006.9 Handler.
1006.10 Producer-handler.

1006.11 [Reserved]
1006.12 Producer.
1006.13 Producer milk.
1006.14 Other source milk.
1006.15 Fluid milk product.
1006.16 Fluid cream product.
1006.17 [Reserved]
1006.18 Cooperative association.
1006.19 Commercial food processing establishment.

Handler Reports

1006.30 Reports of receipts and utilization.
1006.31 Payroll reports.
1006.32 Other reports.

Classification of Milk

1006.40 Classes of utilization.
1006.41 [Reserved]
1006.42 Classification of transfers and diversions.
1006.43 General classification rules.
1006.44 Classification of producer milk.
1006.45 Market administrator's reports and announcements concerning classification.

Class Prices

1006.50 Class prices, component prices, and advanced pricing factors.
1006.51 Class I differential and price.
1006.52 Adjusted Class I differentials.
1006.53 Announcement of class prices, component prices, and advanced pricing factors.
1006.54 Equivalent price.

Uniform Prices

1006.60 Handler's value of milk.
1006.61 Computation of uniform prices.
1006.62 Announcement of uniform prices.

Payments for Milk

1006.70 Producer-settlement fund.
1006.71 Payments to the producer-settlement fund.
1006.72 Payments from the producer-settlement fund.
1006.73 Payments to producers and to cooperative associations.
1006.74 [Reserved]
1006.75 Plant location adjustments for producer milk and nonpool milk.
1006.76 Payments by a handler operating a partially regulated distributing plant.
1006.77 Adjustment of accounts.
1006.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1006.85 Assessment for order administration.
1006.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674, and 7253.

Subpart—Order Regulating Handling

General Provisions

§ 1006.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1006. In this part 1006, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1006.2 Florida marketing area.

The marketing area means all the territory within the State of Florida, except the counties of Escambia, Okaloosa, Santa Rosa, and Walton, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions.

§ 1006.3 Route disposition.

See § 1000.3.

§ 1006.4 Plant.

See § 1000.4.

§ 1006.5 Distributing plant.

See § 1000.5.

§ 1006.6 Supply plant.

See § 1000.6.

§ 1006.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, or a unit of plants as specified in paragraph (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or § _____.7(b) of any other Federal milk order, from which during the month 50 percent or more of the fluid milk products physically received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 50 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which 60 percent or more of the total quantity of milk that is physically received during the month from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted from the plant, is transferred to pool distributing plants. Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage.

(d) A plant located within the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month 60 percent of the producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) from the cooperative's plant.

(e) Two or more plants operated by the same handler and that are located within the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements specified in paragraph (a) of this section and the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit, or to add or remove plants from a unit, must be filed with the market administrator prior to the first day of the month for which it is to be effective.

(f) The applicable shipping percentages of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the date for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and

invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area, meets the pooling requirements of another Federal order, and has had greater route disposition in such other Federal order marketing area for 3 consecutive months;

(4) A plant qualified pursuant to paragraph (a) of this section which is located in another Federal order marketing area, meets the pooling standards of the other Federal order, and has not had a majority of its route disposition in this marketing area for 3 consecutive months or is locked into pool status under such other Federal order without regard to its route disposition in any other Federal order marketing area; and

(5) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under such other order than are made to plants regulated under the order in this part, or such plant has automatic pooling status under such other order.

§ 1006.8 Nonpool plant.

See § 1000.8.

§ 1006.9 Handler.

See § 1000.9.

§ 1006.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area;

(b) Receives no fluid milk products, and acquires no fluid milk products for route disposition, from sources other than own farm production;

(c) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled, and the processing and packaging operations, are the producer-handler's own enterprise and are operated at the producer-handler's own risk.

§ 1006.11 [Reserved]

§ 1006.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1006.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1006.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1006.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk) and butterfat contained in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) In any month, not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 20 percent during the months of July through November, 25 percent during the months of December through February, and 40 percent during all other months, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(3) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 20 percent during the months of July through November, 25 percent during the months of December through February, and 40 percent during all other months, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1006.7(d)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c);

(4) Any milk diverted in excess of the limits prescribed in paragraphs (d) (3) and (4) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that will not be producer milk, no milk diverted by the handler or cooperative association shall be producer milk;

(5) Diverted milk shall be priced at the location of the plant to which diverted; and

(6) The delivery day requirements and the diversion percentages in paragraphs (d) (1) through (3) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1006.14 Other source milk.

See § 1000.14.

§ 1006.15 Fluid milk product.

See § 1000.15.

§ 1006.16 Fluid cream product.

See § 1000.16.

§ 1006.17 [Reserved]

§ 1006.18 Cooperative association.

See § 1000.18.

§ 1006.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1006.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) With respect to each of its pool plants, the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c);

(2) Receipts of milk from handlers described in § 1000.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products; and

(6) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1006.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1006.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in detail prescribed by the market administrator, showing for each producer the information specified in § 1006.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1006.32 Other reports.

In addition to the reports required pursuant to §§ 1006.30 and 1006.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1006.40 Classes of utilization.

See § 1000.40.

§ 1006.41 [Reserved]

§ 1006.42 Classification of transfers and diversions.

See § 1000.42.

§ 1006.43 General classification rules.

See § 1000.43.

§ 1006.44 Classification of producer milk.

See § 1000.44.

§ 1006.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1006.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1006.51 Class I differential and price.

The Class I differential shall be the differential established for Hillsborough County, Florida, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Hillsborough County, Florida.

§ 1006.52 Adjusted Class I differentials.

See § 1000.52.

§ 1006.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1006.54 Equivalent price.

See § 1000.54.

Uniform Prices

§ 1006.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (e) of this section and subtracting from that total amount the value computed in paragraph (f) of this section. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts;

(b) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(c) Multiply the difference between the Class IV price for the preceding month and the current month's Class I, II, or III price, as the case may be, by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(d) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(e) Multiply the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat

in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(f) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1006.61 Computation of uniform prices.

On or before the 11th day of each month, the market administrator shall compute a uniform butterfat price, a uniform skim milk price, and a uniform price for producer milk receipts reported for the prior month. The report of any handler who has not made payments required pursuant to § 1006.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations.

(a) *Uniform butterfat price*. The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices and dividing the sum of such values by the total pounds of such butterfat.

(b) *Uniform skim milk price.* The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Combine into one total the values computed pursuant to § 1006.60 for all handlers;

(2) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1006.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the pounds of butterfat by the butterfat price computed in paragraph (a) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1006.60(e); and

(6) Subtract not less than 4 cents and not more than 5 cents.

(c) *Uniform price.* The uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

§ 1006.62 Announcement of uniform prices.

On or before the 11th day after the end of the month, the market administrator shall announce the uniform prices for the month computed pursuant to § 1006.61.

Payments for Milk

§ 1006.70 Producer-settlement fund.

See § 1000.70.

§ 1006.71 Payments to the producer-settlement fund.

Each handler shall make a payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 12th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk of the handler for the month as determined pursuant to § 1006.60; and

(b) The sum of the value at the uniform prices for skim milk and butterfat, adjusted for plant location, of the handler's receipts of producer milk; and the value at the uniform price, as adjusted pursuant to § 1006.75, applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1006.60(e).

§ 1006.72 Payments from the producer-settlement fund.

No later than one day after the date of payment receipt required under § 1006.71, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1006.71(b) exceeds the amount computed pursuant to § 1006.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1006.73 Payments to producers and to cooperative associations.

(a) Each pool plant operator that is not paying a cooperative association for producer milk shall pay each producer as follows:

(1) *Partial payments.* (i) For each producer who has not discontinued shipments as of the 15th day of the month, payment shall be made so that it is received by the producer on or before the 20th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month at not less than 85 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1006.75 and proper deductions authorized in writing by the producer; and

(ii) For each producer who has not discontinued shipments as of the last day of the month, payment shall be made so that it is received by the producer on or before the 5th day of the following month (except as provided in § 1000.90) for milk received from the 16th to the last day of the month at not less than 85 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1006.75 and proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, a payment computed as follows shall be made so that it is received by each producer one day after the payment date required in § 1006.72:

(i) Multiply the hundredweight of producer skim milk received times the uniform skim milk price for the month;

(ii) Multiply the pounds of butterfat received times the uniform butterfat price for the month;

(iii) Multiply the hundredweight of producer milk received times the plant location adjustment pursuant to § 1006.75; and

(iv) Add the amounts computed in paragraphs (a)(2)(i), (ii), and (iii) of this section, and from that sum:

(A) Subtract the partial payments made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) One day before partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1006.75.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available for skim milk and butterfat at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment shall be the classified value of such milk as determined by multiplying the pounds of skim milk and butterfat assigned to each class pursuant to § 1000.44 by the class prices for the month at the receiving plant's location, and subtracting from this sum the partial payment made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1006.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association described in § 1000.9(a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

(3) The total pounds of butterfat in the producer's milk;

(4) The minimum rate or rates at which payment to the producer is required pursuant to the order in this part;

(5) The rate used in making payment if the rate is other than the applicable minimum rate;

(6) The amount, or rate per hundredweight, and nature of each deduction claimed by the handler; and

(7) The net amount of payment to the producer or cooperative association.

§ 1006.74 [Reserved]

§ 1006.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1006.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1006.73 and 1000.76.

§ 1006.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1006.77 Adjustment of accounts.

See § 1000.77.

§ 1006.78 Charges on overdue accounts.

See § 1000.78.

Administrative Assessment and Marketing Service Deduction

§ 1006.85 Assessment for order administration.

See § 1000.85.

§ 1006.86 Deduction for marketing services.

See § 1000.86.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1007.1 General provisions.

Definitions

1007.2 Southeast marketing area.
1007.3 Route disposition.
1007.4 Plant.
1007.5 Distributing plant.
1007.6 Supply plant.
1007.7 Pool plant.
1007.8 Nonpool plant.
1007.9 Handler.
1007.10 Producer-handler.
1007.11 [Reserved]
1007.12 Producer.
1007.13 Producer milk.
1007.14 Other source milk.
1007.15 Fluid milk product.
1007.16 Fluid cream product.
1007.17 [Reserved]
1007.18 Cooperative association.
1007.19 Commercial food processing establishment.

Handler Reports

1007.30 Reports of receipts and utilization.
1007.31 Payroll reports.
1007.32 Other reports.

Classification of Milk

1007.40 Classes of utilization.
1007.41 [Reserved]

1007.42 Classification of transfers and diversions.
1007.43 General classification rules.
1007.44 Classification of producer milk.
1007.45 Market administrator's reports and announcements concerning classification.

Class Prices

1007.50 Class prices, component prices, and advanced pricing factors.
1007.51 Class I differential and price.
1007.52 Adjusted Class I differentials.
1007.53 Announcement of class prices, component prices, and advanced pricing factors.
1007.54 Equivalent price.

Uniform Prices

1007.60 Handler's value of milk.
1007.61 Computation of uniform prices.
1007.62 Announcement of uniform prices.

Payments for Milk

1007.70 Producer-settlement fund.
1007.71 Payments to the producer-settlement fund.
1007.72 Payments from the producer-settlement fund.
1007.73 Payments to producers and to cooperative associations.
1007.74 [Reserved]
1007.75 Plant location adjustments for producer milk and nonpool milk.
1007.76 Payments by a handler operating a partially regulated distributing plant.
1007.77 Adjustment of accounts.
1007.78 Charges on overdue accounts.

Marketwide Service Payments

1007.80 Transportation credit balancing fund.
1007.81 Payments to the transportation credit balancing fund.
1007.82 Payments from the transportation credit balancing fund.

Administrative Assessment and Marketing Service Deduction

1007.85 Assessment for order administration.
1007.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674, and 7253.

Subpart—Order Regulating Handling

General Provisions

§ 1007.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1007. In this part 1007, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1007.2 Southeast marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Alabama, Arkansas, Louisiana, and Mississippi

All of the States of Alabama, Arkansas, Louisiana, and Mississippi.

Florida Counties

Escambia, Okaloosa, Santa Rosa, and Walton.

Georgia Counties

All of the State of Georgia except for the counties of Catoosa, Chattooga, Dade, Fannin, Murray, Walker, and Whitfield.

Kentucky Counties

Allen, Ballard, Barren, Caldwell, Calloway, Carlisle, Christian, Crittenden, Fulton, Graves, Hickman, Livingston, Logan, Lyon, Marshall,McCracken, Metcalfe, Monroe, Simpson, Todd, Trigg, and Warren.

Missouri Counties

Barry, Barton, Bollinger, Butler, Cape Girardeau, Carter, Cedar, Christian, Crawford, Dade, Dallas, Dent, Douglas, Dunklin, Greene, Howell, Iron, Jasper, Laclede, Lawrence, Madison, McDonald, Mississippi, New Madrid, Newton, Oregon, Ozark, Pemiscot, Perry, Polk, Reynolds, Ripley, Scott, Shannon, St. Francois, Stoddard, Stone, Taney, Texas, Vernon, Washington, Wayne, Webster, and Wright.

Tennessee Counties

All of the State of Tennessee except for the counties of Anderson, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Cumberland, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, and Washington.

§ 1007.3 Route disposition.

See § 1000.3.

§ 1007.4 Plant.

See § 1000.4.

§ 1007.5 Distributing plant.

See § 1000.5.

§ 1007.6 Supply plant.

See § 1000.6.

§ 1007.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, or a unit of plants as specified in paragraph (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or § _____.7(b) of any other Federal milk order, from which during the month 50 percent or more of the fluid milk products physically received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 50 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which 50 percent or more of the total quantity of milk that is physically received during the month from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted from the plant, is transferred to pool distributing plants. Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage.

(d) A plant located within the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month at least 60 percent of the producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) from the cooperative's plant.

(e) Two or more plants operated by the same handler and located within the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements specified in paragraph (a) of this section and the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit

pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit, or to add or remove plants from a unit, must be filed with the market administrator prior to the first day of the month for which it is to be effective.

(f) The applicable shipping percentages of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the date for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area, meets the pooling requirements of another Federal order, and has had greater route disposition in such other Federal order marketing area for 3 consecutive months;

(4) A plant qualified pursuant to paragraph (a) of this section which is located in another Federal order marketing area, meets the pooling standards of the other Federal order, and has not had a majority of its route disposition in this marketing area for 3 consecutive months or is locked into pool status under such other Federal order without regard to its route disposition in any other Federal order marketing area; and

(5) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under such other order than are made to plants regulated under the order in this part, or such plant has automatic pooling status under such other order.

§ 1007.8 Nonpool plant.

See § 1000.8.

§ 1007.9 Handler.

See § 1000.9.

§ 1007.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area;

(b) Receives no fluid milk products, and acquires no fluid milk products for route disposition, from sources other than own farm production;

(c) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled, and the processing and packaging operations, are the producer-handler's own enterprise and are operated at the producer-handler's own risk.

§ 1007.11 [Reserved]

§ 1007.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1007.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1007.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1007.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk) and butterfat contained in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) In any month of January through June, not less than 4 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) In any month of July through December, not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 33 percent during the months of July through December, and 50 percent during the months of January through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 33 percent during the months of July through December, or 50 percent during the months of January through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1007.7(e)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c);

(5) Any milk diverted in excess of the limits prescribed in paragraphs (d)(3) and (4) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that will not be producer milk, no milk

diverted by the handler or cooperative association shall be producer milk;

(6) Diverted milk shall be priced at the location of the plant to which diverted; and

(7) The delivery day requirements and the diversion percentages in paragraphs (d)(1) through (4) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1007.14 Other source milk.

See § 1000.14.

§ 1007.15 Fluid milk product.

See § 1000.15.

§ 1007.16 Fluid cream product.

See § 1000.16.

§ 1007.17 [Reserved]

§ 1007.18 Cooperative association.

See § 1000.18.

§ 1007.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1007.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) With respect to each of its pool plants, the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c);

(2) Receipts of milk from handlers described in § 1000.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Order 1005, for which a transportation credit is requested pursuant to § 1007.82;

(6) Receipts of producer milk described in § 1007.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to that paragraph and the date that such milk was received;

(7) For handlers submitting transportation credit requests, transfers of bulk milk to nonpool plants, including the dates that such milk was transferred;

(8) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products; and

(9) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (a)(8) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts; and

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1007.82, all of the information required in paragraphs (a)(5), (a)(6), and (a)(7) of this section.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1007.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1007.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in detail prescribed by the market administrator, showing for each producer the information specified in § 1007.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1007.32 Other reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1000.9(a) and (c) shall report to the market administrator any adjustments to transportation credit requests as reported pursuant to § 1007.30(a)(5), (6), and (7).

(b) In addition to the reports required pursuant to §§ 1007.30, 31, and 32(a), each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1007.40 Classes of utilization.

See § 1000.40.

§ 1007.41 [Reserved]

§ 1007.42 Classification of transfers and diversions.

See § 1000.42.

§ 1007.43 General classification rules.

See § 1000.43.

§ 1007.44 Classification of producer milk.

See § 1000.44.

§ 1007.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1007.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1007.51 Class I differential and price.

The Class I differential shall be the differential established for Fulton County, Georgia, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Fulton County, Georgia.

§ 1007.52 Adjusted Class I differentials.

See § 1000.52.

§ 1007.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1007.54 Equivalent price.

See § 1000.54.

Uniform Prices

§ 1007.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk,

the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (e) of this section and subtracting from that total amount the value computed in paragraph (f) of this section. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts;

(b) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(c) Multiply the difference between the Class IV price for the preceding month and the current month's Class I, II, or III price, as the case may be, by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(d) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(e) Multiply the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(f) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1007.61 Computation of uniform prices.

On or before the 11th day of each month, the market administrator shall compute a uniform butterfat price, a uniform skim milk price, and a uniform price for producer milk receipts reported for the prior month. The report of any handler who has not made payments required pursuant to § 1007.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations.

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices and dividing the sum of such values by the total pounds of such butterfat.

(b) *Uniform skim milk price.* The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Combine into one total the values computed pursuant to § 1007.60 for all handlers;

(2) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1007.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the pounds of butterfat by the butterfat price computed in paragraph (a) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1007.60(e); and

(6) Subtract not less than 4 cents and not more than 5 cents.

(c) *Uniform price.* The uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

§ 1007.62 Announcement of uniform prices.

On or before the 11th day after the end of the month, the market administrator shall announce the uniform prices for the month computed pursuant to § 1007.61.

Payments for Milk

§ 1007.70 Producer-settlement fund.

See § 1000.70.

§ 1007.71 Payments to the producer-settlement fund.

Each handler shall make a payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 12th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk of the handler for the month as determined pursuant to § 1007.60; and

(b) The sum of the value at the uniform prices for skim milk and butterfat, adjusted for plant location, of the handler's receipts of producer milk; and the value at the uniform price, as adjusted pursuant to § 1007.75, applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1007.60(e).

§ 1007.72 Payments from the producer-settlement fund.

No later than one day after the date of payment receipt required under § 1007.71, the market administrator shall pay to each handler the amount, if any, by which the amount computed

pursuant to § 1007.71(b) exceeds the amount computed pursuant to § 1007.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1007.73 Payments to producers and to cooperative associations.

(a) Each pool plant operator that is not paying a cooperative association for producer milk shall pay each producer as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 23rd day of the month, payment shall be made so that it is received by the producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month at not less than 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1007.75 and proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, a payment computed as follows shall be made so that it is received by each producer one day after the payment date required in § 1007.72:

(i) Multiply the hundredweight of producer skim milk received times the uniform skim milk price for the month;

(ii) Multiply the pounds of butterfat received times the uniform butterfat price for the month;

(iii) Multiply the hundredweight of producer milk received times the plant location adjustment pursuant to § 1007.75; and

(iv) Add the amounts computed in paragraph (a)(2)(i), (ii), and (iii) of this section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) One day before partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1007.75.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available for skim milk and butterfat at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment shall be the classified value of such milk as determined by multiplying the pounds of skim milk and butterfat assigned to each class pursuant to § 1000.44 by the class prices for the month at the receiving plant's location, and subtracting from this sum the partial payment made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1007.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association described in § 1000.9(a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

(3) The total pounds of butterfat in the producer's milk;

(4) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(5) The rate used in making payment if the rate is other than the applicable minimum rate;

(6) The amount, or rate per hundredweight, and nature of each deduction claimed by the handler; and

(7) The net amount of payment to the producer or cooperative association.

§ 1007.74 [Reserved]

§ 1007.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1007.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1007.73 and 1000.76.

§ 1007.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1007.77 Adjustment of accounts.

See § 1000.77.

§ 1007.78 Charges on overdue accounts.

See § 1000.78.

Marketwide Service Payments

§ 1007.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the *Transportation Credit Balancing Fund* into which shall be deposited the payments made by handlers pursuant to § 1007.81 and out of which shall be made the payments due handlers pursuant to § 1007.82. Payments due a handler shall be offset against payments due from the handler.

§ 1007.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1000.44 by $0.07 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June–January period. In the event that during any month of the June–January period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 5th day of the month (except as provided in § 1000.90) the assessment pursuant to paragraph (a) of this section for the following month.

§ 1007.82 Payments from the transportation credit balancing fund.

(a) Payments from the transportation credit balancing fund to handlers and cooperative associations requesting transportation credits shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90) after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1007.30(a)(5), bulk milk transferred from a plant fully regulated under another Federal order as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1007.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments pro rata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section;

(2) The market administrator shall accept adjusted requests for transportation credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1007.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of transportation credit payments for the preceding month pursuant to paragraph (a) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the transportation credit balancing fund will be made on or before the next payment date for the following month;

(3) Transportation credits paid pursuant to paragraphs (a)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77. Adjusted payments to or from the transportation credit balancing fund will remain subject to the final proration established pursuant to paragraph (a)(2) of this section; and

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1007.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to the months of January and June if a written request to do so is received 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) Transportation credits shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Order 1005, and allocated to Class I milk pursuant to § 1000.44(a)(9); and

(2) Bulk milk received directly from the farms of dairy farmers at pool distributing plants subject to the following conditions:

(i) The quantity of such milk that shall be eligible for the transportation credit shall be determined by multiplying the total pounds of milk received from producers meeting the conditions of this paragraph by the lower of:

(A) The marketwide estimated Class I utilization of all handlers for the month pursuant to § 1000.45(a); or

(B) The Class I utilization of all producer milk of the pool plant operator receiving the milk after the computations described in § 1000.44;

(ii) The dairy farmer was not a ''producer'' under the order in this part during more than 2 of the immediately preceding months of February through May and not more than 50 percent of the production of the dairy farmer during those 2 months, in aggregate, was received as producer milk under the order in this part during those 2 months; and

(iii) The farm on which the milk was produced is not located within the specified marketing area of the order in this part or the marketing area of Federal Order 1005 (7 CFR part 1005).

(d) Transportation credits shall be computed as follows:

(1) The market administrator shall subtract from the pounds of milk described in paragraphs (c)(1) and (2) of this section the pounds of bulk milk transferred from the pool plant receiving the supplemental milk if milk was transferred to a nonpool plant on the same calendar day that the supplemental milk was received. For this purpose, the transferred milk shall be subtracted from the most distant load of supplemental milk received, and then

in sequence with the next most distant load until all of the transfers have been offset;

(2) With respect to the pounds of milk described in paragraph (c)(1) of this section that remain after the computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the shipping plant and the receiving plant;

(ii) Multiply the number of miles so determined by 0.35 cent;

(iii) Subtract the applicable Class I differential in § 1000.52 for the county in which the shipping plant is located from the Class I differential applicable for the county in which the receiving plant is located;

(iv) Subtract any positive difference computed in paragraph (d)(2)(iii) of this section from the amount computed in paragraph (d)(2)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(2)(iv) of this section by the hundredweight of milk described in paragraph (d)(2) of this section.

(3) For the remaining milk described in paragraph (c)(2) of this section after computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine an origination point for each load of milk by locating the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant;

(ii) Determine the shortest hard-surface highway distance between the receiving pool plant and the origination point;

(iii) Subtract 85 miles from the mileage so determined;

(iv) Multiply the remaining miles so computed by 0.35 cent;

(v) Subtract the Class I differential specified in § 1000.52 applicable for the county in which the origination point is located from the Class I differential applicable at the receiving pool plant's location;

(vi) Subtract any positive difference computed in paragraph (d)(3)(v) of this section from the amount computed in paragraph (d)(3)(iv) of this section; and

(vii) Multiply the remainder computed in paragraph (d)(3)(vi) of this section by the hundredweight of milk described in paragraph (d)(3) of this section.

Administrative Assessment and Marketing Service Deduction

§ 1007.85 Assessment for order administration.

See § 1000.85.

§ 1007.86 Deduction for marketing services.

See § 1000.86.

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1030.1 General provisions.

Definitions

1030.2 Upper Midwest marketing area.
1030.3 Route disposition.
1030.4 Plant.
1030.5 Distributing plant.
1030.6 Supply plant.
1030.7 Pool plant.
1030.8 Nonpool plant.
1030.9 Handler.
1030.10 Producer-handler.
1030.11 [Reserved]
1030.12 Producer.
1030.13 Producer milk.
1030.14 Other source milk.
1030.15 Fluid milk product.
1030.16 Fluid cream product.
1030.17 [Reserved]
1030.18 Cooperative association.
1030.19 Commercial food processing establishment.

Handler Reports

1030.30 Reports of receipts and utilization.
1030.31 Payroll reports.
1030.32 Other reports.

Classification of Milk

1030.40 Classes of utilization.
1030.41 [Reserved]
1030.42 Classification of transfers and diversions.
1030.43 General classification rules.
1030.44 Classification of producer milk.
1030.45 Market administrator's reports and announcements concerning classification.

Class Prices

1030.50 Class prices, component prices, and advanced pricing factors.
1030.51 Class I differential and price.
1030.52 Adjusted Class I differentials.
1030.53 Announcement of class prices, component prices, and advanced pricing factors.
1030.54 Equivalent price.
1030.55 Transportation credits and assembly credits.

Producer Price Differential

1030.60 Handler's value of milk.
1030.61 Computation of producer price differential.
1030.62 Announcement of producer prices.

Payments for Milk

1030.70 Producer-settlement fund.
1030.71 Payments to the producer-settlement fund.
1030.72 Payments from the producer-settlement fund.
1030.73 Payments to producers and to cooperative associations.
1030.74 [Reserved]
1030.75 Plant location adjustments for producer milk and nonpool milk.
1030.76 Payments by a handler operating a partially regulated distributing plant.
1030.77 Adjustment of accounts.
1030.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1030.85 Assessment for order administration.
1030.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674, and 7253.

Subpart—Order Regulating Handling

General Provisions

§ 1030.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1030. In this part 1030, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1030.2 Upper Midwest marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Illinois Counties

Boone, Carroll, Cook, De Kalb, Du Page, Jo Daviess, Kane, Kendall, Lake, Lee, McHenry, Ogle, Stephenson, Will, and Winnebago.

Iowa Counties

Howard, Kossuth, Mitchell, Winnebago, Winneshiek, and Worth.

Michigan Counties

Delta, Dickinson, Gogebic, Iron, Menominee, and Ontonagon.

Minnesota

All counties except Lincoln, Nobles, Pipestone, and Rock.

North Dakota Counties

Barnes, Cass, Cavalier, Dickey, Grand Forks, Griggs, La Moure, Nelson, Pembina, Ramsey, Ransom, Richland, Sargent, Steele, Traill, and Walsh.

South Dakota Counties

Brown, Day, Edmunds, Grant, Marshall, McPherson, Roberts, and Walworth.

Wisconsin Counties

All counties except Crawford and Grant.

§ 1030.3 Route disposition.

See § 1000.3.

§ 1030.4 Plant.

See § 1000.4.

§ 1030.5 Distributing plant.

See § 1000.5.

§ 1030.6 Supply plant.

See § 1000.6.

§ 1030.7 Pool plant.

Pool plant means a plant, unit of plants, or system of plants as specified in paragraphs (a) through (f) of this section, but excluding a plant specified in paragraph (h) of this section. The pooling standards described in paragraphs (c) and (f) of this section are subject to modification pursuant to paragraph (g) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or (§ _____.7b) of any other Federal milk order, from which during the month 15 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 15 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which the quantity of bulk fluid milk products shipped to (and physically unloaded into) plants described in paragraph (c)(1) of this section is not less than 10 percent of the Grade A milk received from dairy farmers (except dairy farmers described in § 1030.12(b)) and handlers described in § 1000.9(c), including milk diverted pursuant to § 1030.13, subject to the following conditions:

(1) Qualifying shipments may be made to plants described in paragraphs (c)(1)(i) through (iv) of this section, except that whenever shipping requirements are increased pursuant to paragraph (g) of this section, only shipments to pool plants described in paragraphs (a), (b), and (e) of this section shall count as qualifying shipments for the purpose of meeting the increased shipments:

(i) Pool plants described in § 1030.7(a), (b) and (e);

(ii) Plants of producer-handlers;

(iii) Partially regulated distributing plants, except that credit for such shipments shall be limited to the amount of such milk classified as Class I at the transferee plant; and

(iv) Distributing plants fully regulated under other Federal orders, except that credit for shipments to such plants shall be limited to the quantity shipped to pool distributing plants during the month and credits for shipments to other order plants shall not include any such shipments made on the basis of agreed-upon Class II, Class III, or Class IV utilization.

(2) The operator of a supply plant may include as qualifying shipments under this paragraph milk delivered directly from producers' farms pursuant to §§ 1000.9(c) or 1030.13(c) to plants described in paragraphs (a), (b), and (e) of this section.

(3) Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the supply plant's shipping percentage.

(d) [Reserved]

(e) Two or more plants operated by the same handler and located in the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements of a pool distributing plant specified in paragraph (a) of this section and subject to the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process Class I or Class II products, using 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator in Class I or Class II products; and

(3) The operator of the unit has filed a written request with the market administrator prior to the first day of the month for which such status is desired to be effective. The unit shall continue from month-to-month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

(f) A system of 2 or more supply plants operated by one or more handlers may qualify for pooling by meeting the shipping requirements of paragraph (c) of this section in the same manner as a single plant subject to the following additional requirements:

(1) Each plant in the system is located within the marketing area or was a pool supply plant pursuant to § 1030.7(c) for each of the 3 months immediately preceding the applicability date of this paragraph so long as it continues to maintain pool status. Cooperative associations may not use shipments pursuant to § 1000.9(c) to qualify plants located outside the marketing area;

(2) The handler(s) establishing the system submits a written request to the market administrator on or before July 15 requesting that such plants qualify as a system for the period of August through July of the following year. Such request will contain a list of the plants participating in the system in the order, beginning with the last plant, in which the plants will be dropped from the system if the system fails to qualify. Each plant that qualifies as a pool plant within a system shall continue each month as a plant in the system through the following July unless the handler(s) establishing the system submits a written request to the market administrator that the plant be deleted from the system or that the system be discontinued. Any plant that has been so deleted from a system, or that has failed to qualify in any month, will not be part of any system for the remaining months through July. The handler(s) that established a system may add a plant operated by such handler(s) to a system if such plant has been a pool plant each of the 6 prior months and would otherwise be eligible to be in a system, upon written request to the market administrator no later than the 15th day of the prior month. In the event of an ownership change or the business failure of a handler that is a participant in a system, the system may be reorganized to reflect such changes if a written request to file a new marketing agreement is submitted to the market administrator; and

(3) If a system fails to qualify under the requirements of this paragraph, the handler responsible for qualifying the system shall notify the market administrator which plant or plants will be deleted from the system so that the remaining plants may be pooled as a system. If the handler fails to do so, the market administrator shall exclude one or more plants, beginning at the bottom of the list of plants in the system and continuing up the list as necessary until the deliveries are sufficient to qualify the remaining plants in the system.

(g) The applicable shipping percentages of paragraphs (c) and (f) of this section and the diversion limits described in § 1030.13(d)(2) may be increased or decreased, for all or part of the marketing area, by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making

such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping or diversion percentage must be issued in writing at least one day before the effective date.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under the order in this part, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

(i) Any plant that qualifies as a pool plant in each of the immediately preceding 3 months pursuant to paragraph (a) of this section or the shipping percentages in paragraph (c) of this section that is unable to meet such performance standards for the current month because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood), fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than 2 consecutive months.

§ 1030.8 Nonpool plant.

See § 1000.8.

§ 1030.9 Handler.

See § 1000.9.

§ 1030.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area during the month;

(b) Receives fluid milk from own farm production or milk that is fully subject to the pricing and pooling provisions of the order in this part or any other Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler's own enterprise and at its own risk.

§ 1030.11 [Reserved]

§ 1030.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1030.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1030.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1030.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's production of such dairy farmer is physically received as producer milk at a pool plant during the first month the dairy farmer is a producer. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval or as a result of the handler of the dairy farmer's milk failing to pool the milk under any order), the dairy farmer's

milk shall not be eligible for diversion unless at least one day's production of the dairy farmer has been physically received as producer milk at a pool plant during the first month the dairy farmer is re-associated with the market;

(2) The quantity of milk diverted by a handler described in § 1000.9(c) may not exceed 90 percent of the producer milk receipts reported by the handler pursuant to § 1030.30(c) provided that not less than 10 percent of such receipts are delivered to plants described in § 1030.7(c)(1)(i) through (iii). These percentages are subject to any adjustments that may be made pursuant to § 1030.7(g); and

(3) Diverted milk shall be priced at the location of the plant to which diverted.

§ 1030.14 Other source milk.

See § 1000.14.

§ 1030.15 Fluid milk product.

See § 1000.15.

§ 1030.16 Fluid cream product.

See § 1000.16.

§ 1030.17 [Reserved]

§ 1030.18 Cooperative association.

See § 1000.18.

§ 1030.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1030.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 9th day after the end of the month, in the detail and on the prescribed forms, as follows:

(a) Each handler that operates a pool plant shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c); and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information, as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1030.31 Payroll reports.

(a) On or before the 22nd day after the end of each month, each handler that operates a pool plant pursuant to § 1030.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1030.73(f).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1030.32 Other reports.

In addition to the reports required pursuant to §§ 1030.30 and 1030.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1030.40 Classes of utilization.

See § 1000.40.

§ 1030.41 [Reserved]

§ 1030.42 Classification of transfers and diversions.

See § 1000.42.

§ 1030.43 General classification rules.

See § 1000.43.

§ 1030.44 Classification of producer milk.

See § 1000.44.

§ 1030.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1030.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1030.51 Class I differential and price.

The Class I differential shall be the differential established for Cook County, Illinois, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Cook County, Illinois.

§ 1030.52 Adjusted Class I differentials.

See § 1000.52.

§ 1030.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1030.54 Equivalent price.

See § 1000.54.

§ 1030.55 Transportation credits and assembly credits.

(a) Each handler operating a pool distributing plant described in § 1030.7(a), (b), or (e) that receives bulk milk from another pool plant shall receive a transportation credit for such milk computed as follows:

(1) Determine the hundredweight of milk eligible for the credit by completing the steps in paragraph (c) of this section;

(2) Multiply the hundredweight of milk eligible for the credit by .28 cents times the number of miles between the transferor plant and the transferee plant;

(3) Subtract the effective Class I price at the transferor plant from the effective Class I price at the transferee plant;

(4) Multiply any positive amount resulting from the subtraction in paragraph (a)(3) of this section by the hundredweight of milk eligible for the credit; and

(5) Subtract the amount computed in paragraph (a)(4) of this section from the amount computed in paragraph (a)(2) of this section. If the amount computed in paragraph (a)(4) of this section exceeds the amount computed in paragraph (a)(2) of this section, the transportation credit shall be zero.

(b) Each handler operating a pool distributing plant described in § 1030.7(a), (b), or (e) that receives milk from dairy farmers, each handler that transfers or diverts bulk milk from a pool plant to a pool distributing plant, and each handler described in § 1000.9(c) that delivers producer milk to a pool distributing plant shall receive an assembly credit on the portion of such milk eligible for the credit pursuant to paragraph (c) of this section. The credit shall be computed by multiplying the hundredweight of milk eligible for the credit by 8 cents.

(c) The following procedure shall be used to determine the amount of milk eligible for transportation and assembly credits pursuant to paragraphs (a) and (b) of this section:

(1) At each pool distributing plant, determine the aggregate quantity of Class I milk, excluding beginning inventory of packaged fluid milk products;

(2) Subtract the quantity of packaged fluid milk products received at the pool distributing plant from other pool plants and from nonpool plants if such receipts are assigned to Class I;

(3) Subtract the quantity of bulk milk shipped from the pool distributing plant to other plants to the extent that such milk is classified as Class I milk;

(4) Subtract the quantity of bulk milk received at the pool distributing plant from other order plants and unregulated supply plants that is assigned to Class I pursuant to §§ 1000.43(d) and 1000.44; and

(5) Assign the remaining quantity pro rata to physical receipts during the month from:

(i) Producers;

(ii) Handlers described in § 1000.9(c); and

(iii) Other pool plants.

(d) For purposes of this section, the distances to be computed shall be determined by the market administrator using the shortest available state and/or Federal highway mileage. Mileage determinations are subject to redetermination at all times. In the event a handler requests a redetermination of the mileage pertaining to any plant, the market administrator shall notify the handler of such redetermination within 30 days after the receipt of such request. Any financial obligations resulting from a change in mileage shall not be retroactive for any periods prior to the redetermination by the market administrator.

Producer Price Differential

§ 1030.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (i) of this section and subtracting from that total amount the values computed in paragraphs (j) and (k) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value. (1) Multiply the pounds of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) Class II value. (1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value. (1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value. (1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Compute an adjustment for the somatic cell content of producer milk by multiplying the values reported pursuant to § 1030.30(a)(1) and (c)(1) by the percentage of total producer milk allocated to Class II, Class III, and Class IV pursuant to § 1000.44(c);

(f) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding step of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(g) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month and by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(h) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from plants regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(j) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of

nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

(k) Compute the amount of credits applicable pursuant to § 1030.55.

§ 1030.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1030.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1030.60 for all handlers required to file reports prescribed in § 1030.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1030.60 by the protein price, the other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1030.30 (a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1030.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1030.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1030.62 Announcement of producer prices.

On or before the 13th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The somatic cell adjustment rate;

(g) The average butterfat, nonfat solids, protein and other solids content of producer milk; and

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1030.70 Producer-settlement fund.

See § 1000.70.

§ 1030.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 15th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1030.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1030.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

(3) The total value of the somatic cell adjustment to producer milk; and

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1030.60(i) by the producer price differential as adjusted pursuant to § 1030.75 for the location of the plant from which received.

§ 1030.72 Payments from the producer-settlement fund.

No later than the 16th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1030.71(b) exceeds the amount computed pursuant to § 1030.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1030.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the date of this partial payment, payment shall be made so that it is received by each producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month from the producer at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 17th day after the end of the month (except as provided in § 1000.90) in an amount equal to not less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1030.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer, and plus or minus adjustments for errors in previous payments to such producer subject to approval by the market administrator; and

(viii) Less deductions for marketing services pursuant to § 1000.86.

(b) *Payments for milk received from cooperative association members.* On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler shall pay to a cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the

individual payments otherwise payable for such producer milk pursuant to paragraphs (a)(1) and (a)(2) of this section.

(c) *Payment for milk received from cooperative association pool plants or from cooperatives as handlers pursuant to § 1000.9(c).* On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler who receives fluid milk products at its plant from a cooperative association in its capacity as the operator of a pool plant or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1000.9(c), including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, shall pay the cooperative for such milk as follows:

(1) For bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant and for milk received from a cooperative association in its capacity as a handler pursuant to § 1000.9(c) during the first 15 days of the month, at not less than the lowest announced class prices per hundredweight for the preceding month;

(2) For the total quantity of bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant, at not less than the total value of such products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under § 1000.44, as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I price to be used shall be that price effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price;

(viii) The hundredweight of Class II, Class III, and Class IV milk times the somatic cell adjustment; and

(ix) Add together the amounts computed in paragraphs (c)(2)(i) through (viii) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section; and

(3) For the total quantity of milk received during the month from a cooperative association in its capacity as a handler under § 1000.9(c) as follows:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1030.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Add together the amounts computed in paragraphs (c)(3)(i) through (v) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section.

(d) If a handler has not received full payment from the market administrator pursuant to § 1030.72 by the payment date specified in paragraph (a), (b) or (c) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association (with respect to receipts described in paragraph (b) of this section, prorating the underpayment to the volume of milk received from the cooperative association in proportion to the total milk received from producers by the handler), but not by more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(e) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(f) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The somatic cell count of the producer's milk;

(5) The minimum rate or rates at which payment to the producer is required pursuant to the order in this part;

(6) The rate used in making payment if the rate is other than the applicable minimum rate;

(7) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(8) The net amount of payment to the producer or cooperative association.

§ 1030.74 [Reserved]

§ 1030.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1030.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1030.73 and 1000.76.

§ 1030.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1030.77 Adjustment of accounts.

See § 1000.77.

§ 1030.78 Charges on overdue accounts.

See § 1000.78.

Administrative Assessment and Marketing Service Deduction

§ 1030.85 Assessment for order administration.

See § 1000.85.

§ 1030.86 Deduction for marketing services.

See § 1000.86.

PART 1032—MILK IN THE CENTRAL MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1032.1 General provisions.

Definitions

1032.2 Central marketing area.
1032.3 Route disposition.
1032.4 Plant.
1032.5 Distributing plant.
1032.6 Supply plant.
1032.7 Pool plant.
1032.8 Nonpool plant.
1032.9 Handler.
1032.10 Producer-handler.
1032.11 [Reserved]
1032.12 Producer.
1032.13 Producer milk.
1032.14 Other source milk.
1032.15 Fluid milk product.
1032.16 Fluid cream product.
1032.17 [Reserved]
1032.18 Cooperative association.
1032.19 Commercial food processing establishment.

Handler Reports

1032.30 Reports of receipts and utilization.
1032.31 Payroll reports.
1032.32 Other reports.

Classification of Milk

1032.40 Classes of utilization.
1032.41 [Reserved]
1032.42 Classification of transfers and diversions.
1032.43 General classification rules.
1032.44 Classification of producer milk.
1032.45 Market administrator's reports and announcements concerning classification.

Class Prices

1032.50 Class prices, component prices, and advanced pricing factors.
1032.51 Class I differential and price.
1032.52 Adjusted Class I differentials.
1032.53 Announcement of class prices, component prices, and advanced pricing factors.
1032.54 Equivalent price.

Producer Price Differential

1032.60 Handler's value of milk.
1032.61 Computation of producer price differential.
1032.62 Announcement of producer prices.

Payments for Milk

1032.70 Producer-settlement fund.
1032.71 Payments to the producer-settlement fund.
1032.72 Payments from the producer-settlement fund.
1032.73 Payments to producers and to cooperative associations.
1032.74 [Reserved]
1032.75 Plant location adjustments for producer milk and nonpool milk.
1032.76 Payments by a handler operating a partially regulated distributing plant.
1032.77 Adjustment of accounts.
1032.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1032.85 Assessment for order administration.
1032.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674, and 7253.

Subpart—Order Regulating Handling

General Provisions

§ 1032.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1032. In this part 1032, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1032.2 Central marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Colorado Counties

Adams, Arapahoe, Baca, Bent, Boulder, Chaffee, Clear Creek, Cheyenne, Crowley, Custer, Delta, Denver, Douglas, Eagle, El Paso, Elbert, Fremont, Garfield, Gilpin, Gunnison, Huerfano, Jefferson, Kiowa, Kit Carson, Lake, Larimer, Las Animas, Lincoln, Logan, Mesa, Montrose, Morgan, Otero, Park, Phillips, Pitkin, Prowers, Pueblo, Sedgwick, Summit, Teller, Washington, Weld, and Yuma.

Illinois Counties

Adams, Alexander, Bond, Brown, Bureau, Calhoun, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Grundy, Hamilton, Hancock, Hardin, Henderson, Henry, Iroquois, Jackson, Jasper, Jefferson, Jersey, Johnson, Kankakee, Knox, La Salle, Lawrence, Livingston, Logan, McDonough, McLean, Macon, Macoupin, Madison, Marion, Marshall, Mason, Massac, Menard, Mercer, Monroe, Montgomery, Morgan, Moultrie, Peoria, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Rock Island, Saline, Sangamon, Schuyler, Scott, Shelby, St. Clair, Stark, Tazewell, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Whiteside, Williamson, and Woodford.

Iowa Counties

All Iowa counties except Howard, Kossuth, Mitchell, Winnebago, Winneshiek, and Worth.

Kansas

All of the State of Kansas.

Minnesota Counties

Lincoln, Nobles, Pipestone, and Rock.

Missouri Counties and Cities

The counties of Andrew, Atchison, Bates, Buchanan, Caldwell, Carroll, Cass, Clay, Clinton, Daviess, De Kalb, Franklin, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Jackson, Jefferson, Johnson, Lafayette, Lincoln, Livingston, Mercer, Nodaway, Pettis, Platte, Putnam, Ray, Saline, Schuyler, St. Charles, St. Clair, Ste. Genevieve, St. Louis, Sullivan, Warren, and Worth; and the city of St. Louis.

Nebraska Counties

Adams, Antelope, Boone, Buffalo, Burt, Butler, Cass, Cedar, Chase, Clay, Colfax, Cuming, Custer, Dakota, Dawson, Dixon, Dodge, Douglas, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Gosper, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Howard, Jefferson, Johnson, Kearney, Keith, Knox, Lancaster, Lincoln, Madison, Merrick, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Saline, Sarpy, Saunders, Seward, Sherman, Stanton, Thayer, Thurston, Valley, Washington, Wayne, Webster, and York.

Oklahoma

All of the State of Oklahoma.

South Dakota Counties

Aurora, Beadle, Bon Homme, Brookings, Clark, Clay, Codington, Davison, Deuel, Douglas, Hamlin, Hanson, Hutchinson, Jerauld, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Spink, Turner, Union, and Yankton.

Wisconsin Counties

Crawford and Grant.

§ 1032.3 Route disposition.

See § 1000.3.

§ 1032.4 Plant.

See § 1000.4.

§ 1032.5 Distributing plant.

See § 1000.5.

§ 1032.6 Supply plant.

See § 1000.6.

§ 1032.7 Pool plant.

Pool plant means a plant, unit of plants, or system of plants as specified in paragraphs (a) through (f) of this section, but excluding a plant specified in paragraph (h) of this section. The pooling standards described in paragraphs (c), (d), and (f) of this section are subject to modification pursuant to paragraph (g) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or _____.7(b) of any other Federal milk order, from which during the month 25

percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 25 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which the quantity of bulk fluid milk products transferred or diverted to plants described in paragraph (a) or (b) of this section during each of the months of September through November and January is 35 percent or more of the total Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1032.12(b)) and handlers described in § 1000.9(c), including milk diverted by the plant operator, and 25 percent for all other months, subject to the following conditions:

(1) A supply plant that has qualified as a pool plant during each of the immediately preceding months of August through April shall continue to so qualify in each of the following months of May through July, unless the plant operator files a written request with the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such request and thereafter until the plant qualifies as a pool plant on the basis of milk shipments;

(2) A pool plant operator may include as qualifying shipments milk diverted to pool distributing plants pursuant to § 1032.13(c);

(3) Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the supply plant's shipping percentage;

(4) The operator of a supply plant may include as qualifying shipments transfers of fluid milk products to distributing plants regulated under any other Federal order, except that credit for such transfers shall be limited to the amount of milk, including milk shipped directly from producers' farms, delivered to distributing plants qualified as pool plants pursuant to paragraph (a) or (b) of this section; and

(5) No plant may qualify as a pool plant due to a reduction in the shipping percentage pursuant to paragraph (g) of this section unless it has been a pool supply plant during each of the immediately preceding 3 months.

(d) A plant located in the marketing area and operated by a cooperative association if, during the month or the immediately preceding 12-month period, 35 percent or more of the producer milk of members of the association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) at plants specified in paragraph (a) or (b) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b) or (c) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(e) Two or more plants operated by the same handler and located in the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements of a pool distributing plant specified in paragraph (a) of this section subject to the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process Class I or Class II products, using 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator in Class I or Class II products, and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) The operator of the unit has filed a written request with the market administrator prior to the first day of the month for which such status is desired to be effective. The unit shall continue from month to month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

(f) A system of supply plants may qualify for pooling if 2 or more plants operated by one or more handlers meet the applicable percentage requirements of paragraph (c) of this section in the same manner as a single plant, subject to the following additional requirements:

(1) Each plant in the system is located within the marketing area;

(2) The handler(s) establishing the system submits a written request to the market administrator on or before September 1 requesting that such plants qualify as a system for the period of September through August of the following year. Such request will contain a list of the plants participating in the system;

(3) Each plant included within a pool supply plant system shall continue each month as a plant in the system through the following August unless the handler(s) establishing the system submits a written request to the market administrator that the plant be deleted from the system or that the system be discontinued. Any plant that has been so deleted from a system, or that has failed to qualify in any month, will not be part of any system for the remaining months through August. No plant may be added in any subsequent month through the following August to a system that qualifies in September; and

(4) If a system fails to qualify under the requirements of this paragraph, the handler responsible for qualifying the system shall notify the market administrator which plant or plants will be deleted from the system so that the remaining plants may be pooled as a system. If the handler fails to do so, the market administrator shall exclude one or more plants, beginning at the bottom of the list of plants in the system and continuing up the list as necessary until the deliveries are sufficient to qualify the remaining plants in the system.

(g) The applicable shipping percentages of paragraphs (c), (d), and (f) of this section may be increased or decreased, for all or part of the marketing area, by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation

shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the market administrator is to be effective, the market administrator may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under the order in this part, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

§ 1032.8 Nonpool plant.

See § 1000.8.

§ 1032.9 Handler.

See § 1000.9.

§ 1032.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area during the month;

(b) Receives fluid milk from own farm production or milk that is fully subject to the pricing and pooling provisions of the order in this part or any other Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler's own enterprise and at its own risk.

§ 1032.11 [Reserved]

§ 1032.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1032.13; or (2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1032.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1032.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion until at least one day's production of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant;

(2) Of the quantity of producer milk received during the month (including diversions, but excluding the quantity of producer milk received from a handler described in § 1000.9(c)) the handler diverts to nonpool plants not more than 65 percent during the months of September through November and January, and not more than 75 percent during the months of February through April and December;

(3) Diverted milk shall be priced at the location of the plant to which diverted;

(4) Any milk diverted in excess of the limits prescribed in paragraph (d)(2) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk; and

(5) The applicable diversion limits in paragraph (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1032.14 Other source milk.

See § 1000.14.

§ 1032.15 Fluid milk product.

See § 1000.15.

§ 1032.16 Fluid cream product.

See § 1000.16.

§ 1032.17 [Reserved]

§ 1032.18 Cooperative association.

See § 1000.18.

§ 1032.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1032.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on the prescribed forms, as follows:

(a) Each handler that operates a pool plant pursuant to § 1032.7 shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c); and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information, as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1032.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1032.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1032.73(f).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1032.32 Other reports.

In addition to the reports required pursuant to §§ 1032.30 and 1032.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1032.40 Classes of utilization.

See § 1000.40.

§ 1032.41 [Reserved]

§ 1032.42 Classification of transfers and diversions.

See § 1000.42.

§ 1032.43 General classification rules.

See § 1000.43.

§ 1032.44 Classification of producer milk.

See § 1000.44.

§ 1032.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1032.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1032.51 Class I differential and price.

The Class I differential shall be the differential established for Jackson County, Missouri, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Jackson County, Missouri.

§ 1032.52 Adjusted Class I differentials.

See § 1000.52.

§ 1032.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1032.54 Equivalent price.

See § 1000.54.

Producer Price Differential

§ 1032.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk,

the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (i) of this section and subtracting from that total amount the value computed in paragraph (j) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) *Class I value.* (1) Multiply the pounds of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) *Class II value.* (1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) *Class III value.* (1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) *Class IV value.* (1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Compute an adjustment for the somatic cell content of producer milk by multiplying the values reported pursuant to § 1032.30(a)(1) and (c)(1) by the percentage of total producer milk allocated to Class II, Class III, and Class IV pursuant to § 1000.44(c);

(f) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding step of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(g) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(h) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(j) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1032.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1032.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1032.60 for all handlers required to file reports prescribed in § 1032.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1032.60 by the protein price, the other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1032.30(a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1032.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1032.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1032.62 Announcement of producer prices.

On or before the 11th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The somatic cell adjustment rate;

(g) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1032.70 Producer-settlement fund.

See § 1000.70.

§ 1032.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 14th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1032.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1032.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

(3) The total value of the somatic cell adjustment to producer milk; and

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1032.60(i) by the producer price differential as adjusted pursuant to § 1032.75 for the location of the plant from which received.

§ 1032.72 Payments from the producer-settlement fund.

No later than the 15th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1032.71(b) exceeds the amount computed pursuant to § 1032.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1032.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the date of this partial payment, payment shall be made so that it is received by each producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month from the producer at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 17th day after the end of the month (except as provided in § 1000.90) in an amount equal to not less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1032.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments to such producer; and

(viii) Less deductions for marketing services pursuant to § 1000.86.

(b) *Payments for milk received from cooperative association members.* On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler shall pay to a cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the individual payments otherwise payable for such producer milk pursuant to paragraphs (a)(1) and (a)(2) of this section.

(c) *Payment for milk received from cooperative association pool plants or from cooperatives as handlers pursuant to § 1000.9(c).* On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler who receives fluid milk products at its plant from a cooperative association in its capacity as the operator of a pool plant or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1000.9(c), including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, shall pay the cooperative for such milk as follows:

(1) For bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant and for milk received from a cooperative association in its capacity as a handler pursuant to § 1000.9(c) during the first 15 days of the month, at not less than the lowest announced class prices per hundredweight for the preceding month;

(2) For the total quantity of bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant, at not less than the total value of such products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under § 1000.44 as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I prices to be used shall be the prices effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price;

(viii) The hundredweight of Class II, Class III, and Class IV milk times the somatic cell adjustment; and

(ix) Add together the amounts computed in paragraphs (c)(2)(i) through (viii) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section; and

(3) For the total quantity of milk received during the month from a cooperative association in its capacity as a handler under § 1000.9(c) as follows:

(i) The hundredweight of producer milk received times the producer price

differential as adjusted pursuant to § 1032.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Add together the amounts computed in paragraphs (c)(3)(i) through (v) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section.

(d) If a handler has not received full payment from the market administrator pursuant to § 1032.72 by the payment date specified in paragraph (a), (b) or (c) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association (with respect to receipts described in paragraph (b) of this section, prorating the underpayment to the volume of milk received from the cooperative association in proportion to the total milk received from producers by the handler), but not by more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(e) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(f) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The somatic cell count of the producer's milk;

(5) The minimum rate or rates at which payment to the producer is required pursuant to the order in this part;

(6) The rate used in making payment if the rate is other than the applicable minimum rate;

(7) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(8) The net amount of payment to the producer or cooperative association.

§ 1032.74 [Reserved]

§ 1032.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1032.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1032.73 and 1000.76.

§ 1032.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1032.77 Adjustment of accounts.

See § 1000.77.

§ 1032.78 Charges on overdue accounts.

See § 1000.78.

Administrative Assessment and Marketing Service Deduction

§ 1032.85 Assessment for order administration.

See § 1000.85.

§ 1032.86 Deduction for marketing services.

See § 1000.86.

PART 1033—MILK IN THE MIDEAST MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1033.1 General provisions.

Definitions

1033.2 Mideast marketing area.
1033.3 Route disposition.
1033.4 Plant.
1033.5 Distributing plant.
1033.6 Supply plant.
1033.7 Pool plant.
1033.8 Nonpool plant.
1033.9 Handler.
1033.10 Producer-handler.
1033.11 [Reserved]
1033.12 Producer.
1033.13 Producer milk.
1033.14 Other source milk.
1033.15 Fluid milk product.
1033.16 Fluid cream product.
1033.17 [Reserved]
1033.18 Cooperative association.
1033.19 Commercial food processing establishment.

Handler Reports

1033.30 Reports of receipts and utilization.
1033.31 Payroll reports.
1033.32 Other reports.

Classification of Milk

1033.40 Classes of utilization.
1033.41 [Reserved]
1033.42 Classification of transfers and diversions.
1033.43 General classification rules.
1033.44 Classification of producer milk.
1033.45 Market administrator's reports and announcements concerning classification.

Class Prices

1033.50 Class prices, component prices, and advanced pricing factors.
1033.51 Class I differential and price.
1033.52 Adjusted Class I differentials.
1033.53 Announcement of class prices, component prices, and advanced pricing factors.
1033.54 Equivalent price.

Producer Price Differential

1033.60 Handler's value of milk.
1033.61 Computation of producer price differential.
1033.62 Announcement of producer prices.

Payments for Milk

1033.70 Producer-settlement fund.
1033.71 Payments to the producer-settlement fund.
1033.72 Payments from the producer-settlement fund.
1033.73 Payments to producers and to cooperative associations.
1033.74 [Reserved]
1033.75 Plant location adjustments for producer milk and nonpool milk.
1033.76 Payments by a handler operating a partially regulated distributing plant.
1033.77 Adjustment of accounts.
1033.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1033.85 Assessment for order administration.
1033.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674, and 7253.

Subpart—Order Regulating Handling

General Provisions

§ 1033.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1033. In this part 1033, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1033.2 Mideast marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Indiana Counties

Adams, Allen, Bartholomew, Benton, Blackford, Boone, Brown, Carroll, Cass, Clay, Clinton, Dearborn, Decatur, De Kalb, Delaware, Elkhart, Fayette, Fountain, Franklin, Fulton, Grant, Hamilton, Hancock, Hendricks, Henry, Howard, Huntington, Jackson, Jasper, Jay, Jefferson, Jennings, Johnson, Kosciusko, Lagrange, Lake, La Porte, Lawrence, Madison, Marion, Marshall, Miami, Monroe, Montgomery, Morgan, Newton, Noble, Ohio, Owen, Parke, Porter, Pulaski, Putnam, Randolph, Ripley, Rush, Shelby, St. Joseph, Starke, Steuben, Switzerland, Tippecanoe, Tipton, Union, Vermillion, Vigo, Wabash, Warren, Wayne, Wells, White, and Whitley.

Kentucky Counties

Boone, Boyd, Bracken, Campbell, Floyd, Grant, Greenup, Harrison, Johnson, Kenton, Lawrence, Lewis, Magoffin, Martin, Mason, Pendleton, Pike, and Robertson.

Michigan Counties

All counties except Delta, Dickinson, Gogebic, Iron, Menominee, and Ontonagon.

Ohio

The townships of Woodville and Madison in Sandusky County and all other counties in Ohio except Erie, Huron, and Ottawa.

Pennsylvania Counties

Allegheny, Armstrong, Beaver, Butler, Crawford, Erie, Fayette, Greene, Lawrence, Mercer, Venango, and Washington.

In Clarion County only the townships of Ashland, Beaver, Licking, Madison, Perry, Piney, Richland, Salem, and Toby.

All of Westmoreland County except the townships of Cook, Donegal, Fairfield, Ligonier, and St. Clair, and the boroughs of Bolivar, Donegal, Ligonier, New Florence, and Seward.

West Virginia Counties

Barbour, Boone, Brooke, Cabell, Calhoun, Doddridge, Fayette, Gilmer, Hancock, Harrison, Jackson, Kanawha, Lewis, Lincoln, Logan, Marion, Marshall, Mason, Mingo, Monongalia, Ohio, Pleasants, Preston, Putnam, Raleigh, Randolph, Ritchie, Roane, Taylor, Tucker, Tyler, Upshur, Wayne, Wetzel, Wirt, Wood, and Wyoming.

§ 1033.3 Route disposition.

See § 1000.3.

§ 1033.4 Plant.

See § 1000.4.

§ 1033.5 Distributing plant.

See § 1000.5.

§ 1033.6 Supply plant.

See § 1000.6.

§ 1033.7 Pool plant.

Pool plant means a plant, unit of plants, or a system of plants as specified in paragraphs (a) through (f) of this section, but excluding a plant specified in paragraph (h) of this section. The pooling standards described in paragraphs (c) through (f) of this section are subject to modification pursuant to paragraph (g) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or § _____.7(b) of any other Federal milk order, from which during the month 30 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 30 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which the quantity of bulk fluid milk products shipped to, received at, and physically unloaded into plants described in paragraph (a) or (b) of this section as a percent of the Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1033.12(b)) and handlers described in § 1033.9(c), as reported in § 1033.30(a), is not less than 30 percent of the milk received from dairy farmers, including milk diverted pursuant to § 1033.13, subject to the following conditions:

(1) Qualifying shipments pursuant to this paragraph may be made to the following plants, except whenever the authority provided in paragraph (g) of this section is applied to increase the shipping requirements specified in this section, only shipments to pool plants described in § 1033.7(a) and (b), shall count as qualifying shipments for the purpose of meeting the increased shipments:

(i) Pool plants described in § 1033.7(a) and (b);

(ii) Plants of producer-handlers;

(iii) Partially regulated distributing plants, except that credit for such shipments shall be limited to the amount of such milk classified as Class I at the transferee plant; and

(iv) Distributing plants fully regulated under other Federal orders, except that credit for transfers to such plants shall be limited to the quantity shipped to pool distributing plants during the month. Qualifying transfers to other order plants shall not include transfers made on the basis of agreed-upon Class II, Class III, or Class IV utilization.

(2) The operator of a supply plant may include deliveries to pool distributing plants directly from farms of producers pursuant to § 1033.13(c) as up to 90 percent of the supply plant's qualifying shipments.

(3) Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the supply plant's shipping percentage.

(4) A supply plant that meets the shipping requirements of this paragraph during each of the immediately preceding months of September through February shall be a pool plant during the following months of March through August unless the milk received at the plant fails to meet the requirements of a duly constituted regulatory agency, the plant fails to meet a shipping requirement instituted pursuant to paragraph (g) of this section, or the plant operator requests nonpool status for the plant. Such nonpool status shall be effective on the first day of the month following the receipt of such request and thereafter until the plant again qualifies as a pool plant on the basis of its deliveries to a pool distributing plant(s). The automatic pool qualification of a plant can be waived if the handler or cooperative requests in writing to the market administrator the nonpool status of such plant. The request must be made prior to the beginning of any month during the March through August period. The plant shall be a nonpool plant for such month and thereafter until it requalifies under paragraph (c) of this section on the basis of actual shipments therefrom. To

requalify as a pool plant under paragraph (d), (e) or (f) of this section, such plant must first have met the percentage shipping requirements of paragraph (c) of this section for 6 consecutive months.

(5) A supply plant that does not meet the minimum delivery requirements specified in this paragraph to qualify for pool status in the current month because a distributing plant to which the supply plant delivered its fluid milk products during such month failed to qualify as a pool plant pursuant to paragraph (a) or (b) of this section shall continue to be a pool plant for the current month if such supply plant qualified as a pool plant in the 3 immediately preceding months.

(d) A plant operated by a cooperative association if, during the month, 30 percent or more of the producer milk of members of the association is delivered to a distributing pool plant(s) or to a nonpool plant(s), and classification other than Class I is not requested. Deliveries for qualification purposes may be made directly from the farm or by transfer from such association's plant, subject to the following conditions:

(1) The cooperative requests pool status for such plant;

(2) The 30-percent delivery requirement may be met for the current month or it may be met on the basis of deliveries during the preceding 12-month period ending with the current month;

(3) The plant is approved by a duly constituted regulatory authority to handle milk for fluid consumption; and

(4) The plant does not qualify as a pool plant under paragraph (a), (b), or (c) of this section or under the similar provisions of another Federal order applicable to a distributing plant or supply plant.

(e) A plant located inside the marketing area which has been a pool plant under this order or its predecessor orders for twelve consecutive months, but is not otherwise qualified under this paragraph, if it has a marketing agreement with a cooperative association and it fulfills the following conditions:

(1) The aggregate monthly quantity supplied by all parties to such an agreement as a percentage of the producer milk receipts included in the unit during the month is not less than 35 percent; and

(2) Shipments for qualification purposes shall include both transfers from supply plants to plants described in paragraph (c)(1) of this section, and deliveries made direct from the farm to plants qualified under paragraph (a) of this section.

(f) A system of supply plants may qualify for pooling if 2 or more plants operated by one or more handlers meet the applicable percentage requirements of paragraph (c) of this section in the same manner as a single plant subject to the following additional requirements:

(1) Each plant in the system is located within the marketing area, or was a pool supply plant for each of the 3 months immediately preceding the effective date of this paragraph so long as it continues to maintain pool status. Cooperative associations may not use shipments pursuant to § 1033.9(c) to qualify plants located outside the marketing area;

(2) A written notification to the market administrator listing the plants to be included in the system and the handler that is responsible for meeting the performance requirements of this paragraph under a marketing agreement certified to the market administrator by the designated handler and any others included in the system, and the period during which such consideration shall apply. Such notice, and notice of any change in designation, shall be furnished on or before the 5th working day following the month to which the notice applies. The listed plants included in the system shall also be in the sequence in which they shall qualify for pool plant status based on the minimum deliveries required. If the deliveries made are insufficient to qualify the entire system for pooling, the last listed plant shall be excluded from the system, followed by the plant next-to-last on the list, and continuing in this sequence until remaining listed plants have met the minimum shipping requirements; and

(3) Each plant that qualifies as a pool plant within a system shall continue each month as a plant in the system unless the plant subsequently fails to qualify for pooling, or the responsible handler submits a written notification to the market administrator prior to the first day of the month that the plant is to be deleted from the system, or that the system is to be discontinued. In any month of March through August, a system shall not contain any plant which was not qualified under this paragraph, either individually or as a member of a system, during the previous September through February.

(g) The applicable shipping percentages of paragraphs (c) through (f) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section that also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under the order in this part, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a

regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

(i) Any plant that qualifies as a pool plant in each of the immediately preceding 3 months pursuant to paragraph (a) of this section or the shipping percentages in paragraph (c) of this section that is unable to meet such performance standards for the current month because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood), fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than 2 consecutive months.

§ 1033.8 Nonpool plant.

See § 1000.8.

§ 1033.9 Handler.

See § 1000.9.

§ 1033.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area during the month;

(b) Receives fluid milk from own farm production or that is fully subject to the pricing and pooling provisions of the order in this part or any other Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler's own enterprise and at its own risk.

§ 1033.11 [Reserved]

§ 1033.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1033.13; or

(2) Received by a handler described in § 1033.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1033.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1033.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or by a cooperative association described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion until milk of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant;

(2) The equivalent of at least one day's production is caused by the handler to be physically received at a pool plant in each of the months of September through November;

(3) Of the total quantity of producer milk received during the month (including diversions but excluding the quantity of producer milk received from a handler described in § 1000.9(c)), the handler diverted to nonpool plants not more than 60 percent during the months of September through February;

(4) Diverted milk shall be priced at the location of the plant to which diverted;

(5) Any milk diverted in excess of the limits set forth in paragraph (d)(3) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to designate the dairy farmer deliveries which are ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(6) The delivery day requirements and the diversion percentages in paragraphs (d)(2) and (d)(3) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1033.14 Other source milk.

See § 1000.14.

§ 1033.15 Fluid milk products.

See § 1000.15.

§ 1033.16 Fluid cream product.

See § 1000.16.

§ 1033.17 [Reserved]

§ 1033.18 Cooperative association.

See § 1000.18.

§ 1033.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1033.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on the prescribed forms, as follows:

(a) Each handler that operates a pool plant pursuant to § 1033.7 shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c); and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1033.31 Payroll reports.

(a) On or before the 22nd day after the end of each month, each handler that operates a pool plant pursuant to § 1033.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1033.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1033.32 Other reports.

In addition to the reports required pursuant to §§ 1033.30 and 1033.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1033.40 Classes of utilization.

See § 1000.40.

§ 1033.41 [Reserved]

§ 1033.42 Classification of transfers and diversions.

See § 1000.42.

§ 1033.43 General classification rules.

See § 1000.43.

§ 1033.44 Classification of producer milk.

See § 1000.44.

§ 1033.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1033.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1033.51 Class I differential and price.

The Class I differential shall be the differential established for Cuyahoga County, Ohio which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Cuyahoga County, Ohio.

§ 1033.52 Adjusted Class I differentials.

See § 1000.52.

§ 1033.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1033.54 Equivalent price.

See § 1000.54.

Producer Price Differential

§ 1033.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (i) of this section and subtracting from that total amount the value computed in paragraph (j) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

(1) Multiply the pounds of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) Class II value.

(1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value.

(1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids

in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value.

(1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Compute an adjustment for the somatic cell content of producer milk by multiplying the values reported pursuant to § 033.30(a)(1) and (c)(1) by the percentage of total producer milk allocated to Class II, Class III, and Class IV pursuant to § 1000.44(c);

(f) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding step of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(g) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(h) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(j) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1033.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1033.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1033.60 for all handlers required to file reports prescribed in § 1033.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1033.60 by the protein price, the other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1033.30(a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1033.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1033.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1033.62 Announcement of producer prices.

On or before the 13th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The somatic cell adjustment rate;

(g) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1033.70 Producer-settlement fund.

See § 1000.70.

§ 1033.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 15th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1033.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1033.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices, respectively;

(3) The total value of the somatic cell adjustment to producer milk; and

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1033.60(i) by the producer price differential as adjusted pursuant to § 1033.75 for the location of the plant from which received.

§ 1033.72 Payments from the producer-settlement fund.

No later than the 16th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1033.71(b) exceeds the amount computed pursuant to § 1033.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1033.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the date of this partial payment, payment shall be made so that it is received by each producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month from the producer at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 17th day after the end of the month (except as provided in § 1000.90) in an amount equal to not less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1033.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments to such producer; and

(viii) Less deductions for marketing services pursuant to § 1000.86.

(b) *Payments for milk received from cooperative associations.* On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler shall pay to a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association.* For bulk fluid milk/skimmed milk received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the partial payment shall be equal to the hundredweight of milk received multiplied by the lowest announced class price for the preceding month.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk/skimmed milk products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* Following the classification of bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment for such receipts shall be determined as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I prices to be used shall be the prices effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price;

(viii) The hundredweight of Class II, Class III, and Class IV milk times the somatic cell adjustment; and

(ix) Add together the amounts computed in paragraphs (b)(3)(i) through (viii) of this section and from that sum deduct any payment made pursuant to paragraph (b)(2) of this section; and

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1033.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but not by more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(e) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The somatic cell count of the producer's milk;

(5) The minimum rate or rates at which payment to the producer is required pursuant to the order in this part;

(6) The rate used in making payment if the rate is other than the applicable minimum rate;

(7) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(8) The net amount of payment to the producer or cooperative association.

§ 1033.74 [Reserved]

§ 1033.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1033.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1033.73 and 1000.76.

§ 1033.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1033.77 Adjustment of accounts.

See § 1000.77.

§ 1033.78 Charges on overdue accounts.

See § 1000.78.

Administrative Assessment and Marketing Service Deduction

§ 1033.85 Assessment for order administration.

See § 1000.85.

§ 1033.86 Deduction for marketing services.

See § 1000.86.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1124.1 General provisions.

Definitions

1124.2 Pacific Northwest marketing area.
1124.3 Route disposition.
1124.4 Plant.
1124.5 Distributing plant.
1124.6 Supply plant.
1124.7 Pool plant.
1124.8 Nonpool plant.
1124.9 Handler.
1124.10 Producer-handler.
1124.11 Cooperative reserve supply unit.
1124.12 Producer.
1124.13 Producer milk.
1124.14 Other source milk.
1124.15 Fluid milk product.
1124.16 Fluid cream product.
1124.17 [Reserved]
1124.18 Cooperative association.
1124.19 Commercial food processing establishment.

Handler Reports

1124.30 Reports of receipts and utilization.
1124.31 Payroll reports.
1124.32 Other reports.

Classification of Milk

1124.40 Classes of utilization.
1124.41 [Reserved]
1124.42 Classification of transfers and diversions.
1124.43 General classification rules.
1124.44 Classification of producer milk.
1124.45 Market administrator's reports and announcements concerning classification.

Class Prices

1124.50 Class prices, component prices, and advanced pricing factors.
1124.51 Class I differential and price.
1124.52 Adjusted Class I differentials.
1124.53 Announcement of class prices, component prices, and advanced pricing factors.
1124.54 Equivalent price.

Producer Price Differential

1124.60 Handler's value of milk.
1124.61 Computation of producer price differential.
1124.62 Announcement of producer prices.

Payments for Milk

1124.70 Producer-settlement fund.
1124.71 Payments to the producer-settlement fund.
1124.72 Payments from the producer-settlement fund.
1124.73 Payments to producers and to cooperative associations.
1124.74 [Reserved]
1124.75 Plant location adjustments for producer milk and nonpool milk.
1124.76 Payments by a handler operating a partially regulated distributing plant.
1124.77 Adjustment of accounts.
1124.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1124.85 Assessment for order administration.
1124.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674, and 7253.

Subpart—Order Regulating Handling

General Provisions

§ 1124.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1124. In this part 1124, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1124.2 Pacific Northwest marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Idaho Counties

Benewah, Bonner, Boundary, Kootenai, Latah, and Shoshone.

Oregon Counties

Benton, Clackamas, Clatsop, Columbia, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Wasco, Washington, Wheeler, and Yamhill.

Washington

All of the State of Washington.

§ 1124.3 Route disposition.

See § 1000.3.

§ 1124.4 Plant.

See § 1000.4.

§ 1124.5 Distributing plant.

See § 1000.5.

§ 1124.6 Supply plant.

See § 1000.6.

§ 1124.7 Pool plant.

Pool plant means a plant, unit of plants, or a system of plants as specified in paragraphs (a) through (f) of this section, but excluding a plant specified in paragraph (h) of this section. The pooling standards described in paragraph (c) of this section are subject to modification pursuant to paragraph (g) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or § _____.7(b) of any other Federal milk order, from which during the month 25 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 25 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-

pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which during any month not less than 20 percent of the total quantity of milk that is physically received at such plant from dairy farmers eligible to be producers pursuant to § 1124.12 (excluding milk received at such plant as diverted milk from another plant, which milk is classified other than Class I under the order in this part and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act) or diverted as producer milk to another plant pursuant to § 1124.13, is shipped in the form of a fluid milk product (excluding concentrated milk transferred by agreement for other than Class I use) to a pool distributing plant or is a route disposition in the marketing area of fluid milk products processed and packaged at such plant;

(1) A supply plant that has qualified as a pool plant during each of the immediately preceding months of September through February shall continue to so qualify in each of the following months of March through August, unless the plant operator files a written request with the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such request and thereafter until the plant qualifies as a pool plant on the basis of milk shipments;

(2) A cooperative association that operates a supply plant may include as qualifying shipments its deliveries to pool distributing plants directly from farms of producers pursuant to § 1000.9(c);

(3) A pool plant operator may include as qualifying shipments milk diverted to pool distributing plants pursuant to § 1124.13(d);

(4) No plant may qualify as a pool plant due to a reduction in the shipping percentage pursuant to paragraph (g) of this section unless it has been a pool supply plant during each of the immediately preceding 3 months.

(d)–(f) [Reserved]

(g) The applicable shipping percentage of paragraph (c) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area; and

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under the order in this part, or the plant has automatic pooling status under the other Federal order.

§ 1124.8 Nonpool plant.

See § 1000.8.

§ 1124.9 Handler.

See § 1000.9.

§ 1124.10 Producer-handler.

Producer-handler means a person who operates a dairy farm and a distributing plant from which there is route disposition within the marketing area during the month and who the market administrator has designated a producer-handler after determining that all of the requirements of this section have been met.

(a) *Requirements for designation.* Designation of any person as a producer-handler by the market administrator shall be contingent upon meeting the conditions set forth in paragraphs (a)(1) through (4) of this section. Following the cancellation of a previous producer-handler designation, a person seeking to have his/her producer-handler designation reinstated must demonstrate that these conditions have been met for the preceding month.

(1) The care and management of the dairy animals and other resources and facilities designated in paragraph (b)(1) of this section necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) are under the complete and exclusive control and management of the producer-handler and are operated as the producer-handler's own enterprise and at its own risk.

(2) The plant operation designated in paragraph (b)(2) of this section at which the producer-handler processes and packages, and from which it distributes, its own milk production is under the complete and exclusive control and management of the producer-handler and is operated as the producer-handler's own enterprise and at its sole risk.

(3) The producer-handler neither receives at its designated milk production resources and facilities nor receives, handles, processes, or distributes at or through any of its designated milk handling, processing, or distributing resources and facilities other source milk products for reconstitution into fluid milk products or fluid milk products derived from any source other than:

(i) Its designated milk production resources and facilities (own farm production);

(ii) Pool handlers and plants regulated under any Federal order within the limitation specified in paragraph (c)(2) of this section; or

(iii) Nonfat milk solids which are used to fortify fluid milk products.

(4) The producer-handler is neither directly nor indirectly associated with the business control or management of, nor has a financial interest in, another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(b) *Designation of resources and facilities.* Designation of a person as a producer-handler shall include the determination of what shall constitute the person's milk production, handling,

processing, and distribution resources and facilities, all of which shall be considered an integrated operation.

(1) Milk production resources and facilities shall include all resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk which are directly or indirectly, solely or partially, owned, operated, or controlled by the producer-handler, in which the producer-handler in any way has an interest, including any contractual arrangement, or which are directly, indirectly, or partially owned, operated, or controlled by any partner or stockholder of the producer-handler. However, for purposes of this paragraph, any such milk production resources and facilities which do not constitute an actual or potential source of milk supply for the producer-handler's operation shall not be considered a part of the producer-handler's milk production resources and facilities.

(2) Milk handling, processing, and distribution resources and facilities shall include all resources and facilities (including store outlets) used for handling, processing, and distributing fluid milk products which are solely or partially owned by, and directly or indirectly operated or controlled by, the producer-handler or in which the producer-handler in any way has an interest, including any contractual arrangement, or over which the producer-handler directly or indirectly exercises any degree of management or control.

(3) All designations shall remain in effect until canceled pursuant to paragraph (c) of this section.

(c) *Cancellation.* The designation as a producer-handler shall be canceled upon determination by the market administrator that any of the requirements of paragraphs (a)(1) through (4) of this section are not continuing to be met, or under any of the conditions described in paragraphs (c)(1) and (2) of this section. Cancellation of a producer-handler's status pursuant to this paragraph shall be effective on the first day of the month following the month in which the requirements were not met or the conditions for cancellation occurred.

(1) Milk from the milk production resources and facilities of the producer-handler, designated in paragraph (b)(1) of this section, is delivered in the name of another person as producer milk to another handler.

(2) The producer-handler handles fluid milk products derived from sources other than the milk production facilities and resources designated in paragraph (b)(1) of this section, except that it may receive at its plant, or acquire for route disposition, fluid milk products from fully regulated plants and handlers under any Federal order if such receipts do not exceed 150,000 pounds monthly. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month.

(d) *Public announcement.* The market administrator shall publicly announce:

(1) The name, plant location(s), and farm location(s) of persons designated as producer-handlers;

(2) The names of those persons whose designations have been canceled; and

(3) The effective dates of producer-handler status or loss of producer-handler status for each. Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from any producer-handler.

(e) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who is designated as a producer-handler to establish through records required pursuant to § 1000.27 that the requirements set forth in paragraph (a) of this section have been and are continuing to be met, and that the conditions set forth in paragraph (c) of this section for cancellation of designation do not exist.

§ 1124.11 Cooperative reserve supply unit.

Cooperative reserve supply unit means any cooperative association or its agent that is a handler pursuant to § 1000.9(c) that does not own or operate a plant, if such cooperative has been qualified to receive payments pursuant to § 1124.73 and has been a handler of producer milk under the order in this part or its predecessor order during each of the 12 previous months, and if a majority of the cooperative's member producers are located within 125 miles of a plant described in § 1124.7(a). A cooperative reserve supply unit shall be subject to the following conditions:

(a) The cooperative shall file a request with the market administrator for cooperative reserve supply unit status at least 15 days prior to the first day of the month in which such status is desired to be effective. Once qualified as a cooperative reserve supply unit pursuant to this paragraph, such status shall continue to be effective unless the cooperative requests termination prior to the first day of the month that change of status is requested, or the cooperative fails to meet all of the conditions of this section.

(b) The cooperative reserve supply unit supplies fluid milk products to pool distributing plants located within 125 miles of a majority of the cooperative's member producers in compliance with any announcement by the market administrator requesting a minimum level of shipments as follows:

(1) The market administrator may require such supplies of bulk fluid milk from cooperative reserve supply units whenever the market administrator finds that milk supplies for Class I use are needed for plants defined in § 1124.7(a) or (b). Before making such a finding, the market administrator shall investigate the need for such shipments either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the market administrator's investigation shows that such shipments might be appropriate, the market administrator shall issue a notice stating that a shipping announcement is being considered and inviting data, views and arguments with respect to the proposed shipping announcement. Any decision on the required shipment of bulk fluid milk from cooperative reserve supply units must be made in writing at least one day before the effective date.

(2) Failure of a cooperative reserve supply unit to comply with any announced shipping requirements, including making any significant change in the unit's marketing operation that the market administrator determines has the impact of evading or forcing such an announcement, shall result in immediate loss of cooperative reserve supply unit status until such time as the unit has been a handler pursuant to § 1000.9(c) for at least 12 consecutive months.

§ 1124.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1124.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1124.13(e);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I;

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order; and

(5) A dairy farmer whose milk was received at a nonpool plant during the month from the same farm as other than producer milk under the order in this part or any other Federal order. Such a dairy farmer shall be known as a *dairy farmer for other markets.*

§ 1124.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a cooperative reserve supply unit described in § 1124.11. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received and shall not be subject to the conditions specified in paragraph (e) of this section;

(c) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(d) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(e) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c), excluding a cooperative reserve supply unit described in § 1124.11, to a nonpool plant, subject to the following conditions:

(1) Of the quantity of producer milk received during the month (including diversions, but excluding the quantity of producer milk received from a handler described in § 1000.9(c)) the handler diverts to nonpool plants not more than 80 percent during the months of September through February, and not more than 99 percent during the months of March through August;

(2) Two or more handlers described in § 1000.9(c) may have their allowable diversions computed on the basis of their combined deliveries of producer milk which they caused to be delivered to pool plants or diverted during the month if each has filed a request in writing with the market administrator before the first day of the month the agreement is to be effective. The request shall specify the basis for assigning overdiverted milk to the producer deliveries of each according to a method approved by the market administrator.

(3) Diverted milk shall be priced at the location of the plant to which diverted;

(4) Any milk diverted in excess of the limits prescribed in paragraph (e)(1) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by such producer as producer milk during the month will not be subject to § 1124.12(b)(5); and

(5) The applicable diversion limits in paragraph (e)(1) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1124.14 Other source milk.

See § 1000.14.

§ 1124.15 Fluid milk product.

See § 1000.15.

§ 1124.16 Fluid cream product.

See § 1000.16.

§ 1124.17 [Reserved]

§ 1124.18 Cooperative association.

See § 1000.18.

§ 1124.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1124.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 9th day after the end of the month, in the detail and on the prescribed forms, as follows:

(a) Each handler that operates a pool plant pursuant to § 1124.7 shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and pounds of solids-not-fat other than protein (other solids) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c); and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, and other nonfat solids, as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, and the pounds of solids-not-fat other than protein (other solids) contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1124.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1124.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1124.73(f).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1124.32 Other reports.

In addition to the reports required pursuant to §§ 1124.30 and 1124.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1124.40 Classes of utilization.

See § 1000.40.

§ 1124.41 [Reserved]

§ 1124.42 Classification of transfers and diversions.

See § 1000.42.

§ 1124.43 General classification rules.

See § 1000.43.

§ 1124.44 Classification of producer milk.

In addition to the provisions provided in § 1000.44, for purposes of this part 1124, § 1000.44(a)(3)(iv) applies to fluid milk products and bulk fluid cream products received or acquired for distribution from a producer-handler.

§ 1124.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1124.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1124.51 Class I differential and price.

The Class I differential shall be the differential established for King County, Washington, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for King County, Washington.

§ 1124.52 Adjusted Class I differentials.

See § 1000.52.

§ 1124.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1124.54 Equivalent price.

See § 1000.54.

Producer Price Differential

§ 1124.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (h) of this section and subtracting from that total amount the value computed in paragraph (i) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44 (a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76 (a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

(1) Multiply the hundredweight of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) Class II value.

(1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value.

(1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value.

(1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding steps of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(f) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(g) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3) (i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from plants regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(i) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1124.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1124.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1124.60 for all handlers required to file reports prescribed in § 1124.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1124.60 by the protein price, the other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1124.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1124.60(h); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1124.62 Announcement of producer prices.

On or before the 14th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1124.70 Producer-settlement fund.

See § 1000.70.

§ 1124.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 16th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1124.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1124.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices, respectively; and

(3) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1124.60(h) by the producer price differential as adjusted pursuant to § 1124.75 for the location of the plant from which received.

§ 1124.72 Payments from the producer-settlement fund.

No later than the 18th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1124.71(b) exceeds the amount computed pursuant to § 1124.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1124.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 18th day of the month, partial payment shall be made so that it is received by each producer on or before the last day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month from the producer at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 19th day after the end of the month (except as provided in § 1000.90) in an amount equal to not less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1124.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) Less any payment made pursuant to paragraph (a)(1) of this section;

(vi) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments to such producer subject to approval by the market administrator; and

(vii) Less deductions for marketing services pursuant to § 1000.86.

(b) *Payments for milk received from cooperative association members.* On or before the 2nd day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler shall pay to a cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the individual payments otherwise payable for such producer milk pursuant to

paragraphs (a)(1) and (a)(2) of this section.

(c) *Payment for milk received from cooperative association pool plants or from cooperatives as handlers pursuant to § 1000.9(c).* On or before the 2nd day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler who receives fluid milk products at its plant from a cooperative association in its capacity as the operator of a pool plant or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1000.9(c), including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, shall pay the cooperative for such milk as follows:

(1) For bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant and for milk received from a cooperative association in its capacity as a handler pursuant to § 1000.9(c) during the first 15 days of the month, at not less than the lowest announced class price per hundredweight for the preceding month.

(2) For the total quantity of bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant, at not less than the total value of such products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under § 1000.44, as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I prices to be used shall be the prices effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price; and

(viii) Add together the amounts computed in paragraphs (c)(2)(i) through (vii) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section; and

(3) For the total quantity of milk received during the month from a cooperative association in its capacity as a handler under § 1000.9(c) as follows:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1124.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month; and

(v) Add together the amounts computed in paragraphs (c)(3)(i) through (iv) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section.

(d) If a handler has not received full payment from the market administrator pursuant to § 1124.72 by the payment date specified in paragraph (a), (b) or (c) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association (with respect to receipts described in paragraph (b) of this section, prorating the underpayment to the volume of milk received from the cooperative association in proportion to the total milk received from producers by the handler), but not by more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(e) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(f) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The minimum rate or rates at which payment to the producer is required pursuant to the order in this part;

(5) The rate used in making payment if the rate is other than the applicable minimum rate;

(6) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(7) The net amount of payment to the producer or cooperative association.

§ 1124.74 [Reserved]

§ 1124.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1124.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1124.73 and 1000.76.

§ 1124.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1124.77 Adjustment of accounts.

See § 1000.77.

§ 1124.78 Charges on overdue accounts.

See § 1000.78.

Administrative Assessment and Marketing Service Deduction

§ 1124.85 Assessment for order administration.

See § 1000.85.

§ 1124.86 Deduction for marketing services.

See § 1000.86.

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1126.1 General provisions.

Definitions

1126.2 Southwest marketing area.
1126.3 Route disposition.

1126.4 Plant.
1126.5 Distributing plant.
1126.6 Supply plant.
1126.7 Pool plant.
1126.8 Nonpool plant.
1126.9 Handler.
1126.10 Producer-handler.
1126.11 [Reserved]
1126.12 Producer.
1126.13 Producer milk.
1126.14 Other source milk.
1126.15 Fluid milk product.
1126.16 Fluid cream product.
1126.17 [Reserved]
1126.18 Cooperative association.
1126.19 Commercial food processing establishment.

Handler Reports

1126.30 Reports of receipts and utilization.
1126.31 Payroll reports.
1126.32 Other reports.

Classification of Milk

1126.40 Classes of utilization.
1126.41 [Reserved]
1126.42 Classification of transfers and diversions.
1126.43 General classification rules.
1126.44 Classification of producer milk.
1126.45 Market administrator's reports and announcements concerning classification.

Class Prices

1126.50 Class prices, component prices, and advanced pricing factors.
1126.51 Class I differential and price.
1126.52 Adjusted Class I differentials.
1126.53 Announcement of class prices, component prices, and advanced pricing factors.
1126.54 Equivalent price.

Producer Price Differential

1126.60 Handler's value of milk.
1126.61 Computation of producer price differential.
1126.62 Announcement of producer prices.

Payments for Milk

1126.70 Producer-settlement fund.
1126.71 Payments to the producer-settlement fund.
1126.72 Payments from the producer-settlement fund.
1126.73 Payments to producers and to cooperative associations.
1126.74 [Reserved]
1126.75 Plant location adjustments for producer milk and nonpool milk.
1126.76 Payments by a handler operating a partially regulated distributing plant.
1126.77 Adjustment of accounts.
1126.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1126.85 Assessment for order administration.
1126.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674, and 7253.

Subpart—Order Regulating Handling

General Provisions

§ 1126.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1126. In this part 1126, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1126.2 Southwest marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Colorado Counties

Archuleta, LaPlata, and Montezuma.

New Mexico and Texas

All of the States of New Mexico and Texas.

§ 1126.3 Route disposition.

See § 1000.3.

§ 1126.4 Plant.

See § 1000.4.

§ 1126.5 Distributing plant.

See § 1000.5.

§ 1126.6 Supply plant.

See § 1000.6.

§ 1126.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, or a unit of plants as specified in paragraph (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or § _____.7(b) of any other Federal milk order, from which during the month 25 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 25 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which 50 percent or more of the total quantity of milk that is physically received during the month from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted as producer milk to other plants, is transferred to pool distributing plants. Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage.

(d) A plant located within the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month at least 30 percent of the producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) from the cooperative's plant.

(e) Two or more plants operated by the same handler and located within the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements specified in paragraph (a) of this section and the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit, or to add or remove plants from a unit, must be filed with the market administrator prior to the first day of the month for which it is to be effective.

(f) The applicable shipping percentages of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage

needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section that is located within the marketing area if the plant also meets the pooling requirements of another Federal order, and more than 50 percent of its route distribution has been in such other Federal order marketing area for 3 consecutive months;

(4) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant qualified pursuant to paragraph (a) of this section that is located in another Federal order marketing area if the plant meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) or (d) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under the order in this part, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a pool plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in writing by the handler and must be approved by the market administrator.

§ 1126.8 Nonpool plant.

See § 1000.8.

§ 1126.9 Handler.

See § 1000.9.

§ 1126.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area during the month;

(b) Receives fluid milk products from own farm production or milk that is fully subject to the pricing and pooling provisions of the order in this part or another Federal order;

(c) Receives no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order, including such products received at a location other than the producer-handler's processing plant for distribution on routes. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler's own enterprise and at its own risk.

§ 1126.11 [Reserved]

§ 1126.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1126.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1126.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and the milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1126.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat contained in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator for the account of the handler operating such plant to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless a delivery of at least 40,000 pounds or one day's milk production, whichever is less, of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time;

(2) The total quantity of milk diverted during the month by a cooperative association shall not exceed 50 percent of the total quantity of producer milk that the cooperative association caused to be received at pool plants and diverted;

(3) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to this paragraph. The total quantity of milk so diverted during the month shall not exceed 50 percent of the total quantity of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as

a unit pursuant to § 1126.7(e)) and diverted;

(4) Any milk diverted in excess of the limits prescribed in paragraphs (d)(2) and (3) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that will not be producer milk, no milk diverted by the handler or cooperative association shall be producer milk;

(5) Diverted milk shall be priced at the location of the plant to which diverted; and

(6) The delivery requirement in paragraph (d)(1) and the diversion percentages in paragraphs (d)(2) and (3) of this section may be increased or decreased by the market administrator if there is a finding that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise the delivery day requirement or any diversion percentage must be issued in writing at least one day before the effective date.

§ 1126.14 Other source milk.

See § 1000.14.

§ 1126.15 Fluid milk product.

See § 1000.15.

§ 1126.16 Fluid cream product.

See § 1000.16.

§ 1126.17 [Reserved]

§ 1126.18 Cooperative association.

See § 1000.18.

§ 1126.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1126.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 8th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) Each pool plant operator shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of nonfat solids other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c); and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information, as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1126.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1126.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information specified in § 1126.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1126.32 Other reports.

In addition to the reports required pursuant to §§ 1126.30 and 1126.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1126.40 Classes of utilization.

See § 1000.40.

§ 1126.41 [Reserved]

§ 1126.42 Classification of transfers and diversions.

See § 1000.42.

§ 1126.43 General classification rules.

See § 1000.43.

§ 1126.44 Classification of producer milk.

See § 1000.44.

§ 1126.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1126.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1126.51 Class I differential and price.

The Class I differential shall be the differential established for Dallas County, Texas, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Dallas County, Texas.

§ 1126.52 Adjusted Class I differentials.

See § 1000.52.

§ 1126.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1126.54 Equivalent price.

See § 1000.54.

Producer Price Differential

§ 1126.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (i) of this section and subtracting from that total amount the value computed in paragraph (j) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

(1) Multiply the pounds of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) Class II value.

(1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value.

(1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value.

(1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Compute an adjustment for the somatic cell content of producer milk by multiplying the values reported pursuant to § 1126.30(a)(1) and (c)(1) by the percentage of total producer milk allocated to Class II, Class III, and Class IV pursuant to § 1000.44(c);

(f) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding step of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(g) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(h) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from plants regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(j) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1126.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1126.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1126.60 for all handlers required to file reports prescribed in § 1126.30;

(b) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1126.60 by the protein price, other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1126.30(a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1126.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1126.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1126.62 Announcement of producer prices.

On or before the 13th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The somatic cell adjustment rate;

(g) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1126.70 Producer-settlement fund.

See § 1000.70.

§ 1126.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 16th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1126.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1126.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

(3) The total value of the somatic cell adjustment to producer milk; and

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1126.60(i) by the producer price differential as adjusted pursuant to § 1126.75 for the location of the plant from which received.

§ 1126.72 Payments from the producer-settlement fund.

No later than the 17th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1126.71(b) exceeds the amount computed pursuant to § 1126.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1126.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 23rd day of the month, payment shall be made so that it is received by the producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 18th day after the end of the month (except as provided in § 1000.90) in an amount computed as follows:

(i) Multiply the hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1126.75;

(ii) Multiply the pounds of butterfat received times the butterfat price for the month;

(iii) Multiply the pounds of protein received times the protein price for the month;

(iv) Multiply the pounds of other solids received times the other solids price for the month;

(v) Multiply the hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Add the amounts computed in paragraphs (a)(2)(i) through (v) of this section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer subject to approval by the market administrator; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) On or before the day prior to the dates specified for partial and final payments pursuant to paragraph (a) of this section (except as provided in § 1000.90), each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by the lowest announced class price for the preceding month.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk milk/skimmed milk products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* Following the classification of bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment for such receipts shall be determined as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I prices to be used shall be the prices effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price;

(viii) The hundredweight of Class II, Class III, and Class IV milk times the somatic cell adjustment; and

(ix) Add together the amounts computed in paragraphs (b)(3)(i) through (viii) of this section and from that sum deduct any payments made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative

association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1126.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce pro rata its payments to producers or to cooperative associations pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The somatic cell count of the producer's milk;

(5) The minimum rate or rates at which payment to the producer is required pursuant to the order in this part;

(6) The rate used in making payment if the rate is other than the applicable minimum rate;

(7) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(8) The net amount of payment to the producer or cooperative association.

§ 1126.74 [Reserved]

§ 1126.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1126.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1126.73 and 1000.76.

§ 1126.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1126.77 Adjustment of accounts.

See § 1000.77.

§ 1126.78 Charges on overdue accounts.

See § 1000.78.

Administrative Assessment and Marketing Service Deduction

§ 1126.85 Assessment for order administration.

See § 1000.85.

§ 1126.86 Deduction for marketing services.

See § 1000.86.

PART 1131—MILK IN ARIZONA-LAS VEGAS MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1131.1 General provisions.

Definitions

1131.2 Arizona-Las Vegas marketing area.
1131.3 Route disposition.
1131.4 Plant.
1131.5 Distributing plant.
1131.6 Supply plant.
1131.7 Pool plant.
1131.8 Nonpool plant.
1131.9 Handler.
1131.10 Producer-handler.
1131.11 [Reserved]
1131.12 Producer.
1131.13 Producer milk.
1131.14 Other source milk.
1131.15 Fluid milk product.
1131.16 Fluid cream product.
1131.17 [Reserved]
1131.18 Cooperative association.
1131.19 Commercial food processing establishment.

Handler Reports

1131.30 Reports of receipts and utilization.
1131.31 Payroll reports.
1131.32 Other reports.

Classification of Milk

1131.40 Classes of utilization.
1131.41 [Reserved]
1131.42 Classification of transfers and diversions.
1131.43 General classification rules.
1131.44 Classification of producer milk.
1131.45 Market administrator's reports and announcements concerning classification.

Class Prices

1131.50 Class prices, component prices, and advanced pricing factors.
1131.51 Class I differential and price.
1131.52 Adjusted Class I differentials.
1131.53 Announcement of class prices, component prices, and advanced pricing factors.
1131.54 Equivalent price.

Uniform Prices

1131.60 Handler's value of milk.
1131.61 Computation of uniform prices.
1131.62 Announcement of uniform prices.

Payments for Milk

1131.70 Producer-settlement fund.
1131.71 Payments to the producer-settlement fund.
1131.72 Payments from the producer-settlement fund.
1131.73 Payments to producers and to cooperative associations.
1131.74 [Reserved]
1131.75 Plant location adjustments for producers and nonpool milk.
1131.76 Payments by a handler operating a partially regulated distributing plant.
1131.77 Adjustment of accounts.
1131.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1131.85 Assessment for order administration.
1131.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674, and 7253.

Subpart—Order Regulating Handling

General Provisions

§ 1131.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1131. In this part 1131, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1131.2 Arizona-Las Vegas marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves

connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Arizona

All of the State of Arizona.

Nevada Counties

Clark.

§ 1131.3 Route disposition.

See § 1000.3.

§ 1131.4 Plant.

See § 1000.4.

§ 1131.5 Distributing plant.

See § 1000.5.

§ 1131.6 Supply plant.

See § 1000.6.

§ 1131.7 Pool plant.

Pool Plant means a plant or unit of plants specified in paragraphs (a) through (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section.

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this § _____. 7(b) of any other Federal milk order, from which during the month 25 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 25 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which 50 percent or more of the total quantity of milk that is physically received at such plant from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted as producer milk to other plants, is transferred to pool distributing plants. Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage.

(d) A plant located within the marketing area and operated by a cooperative association if, during the month, or the immediately preceding 12-month period ending with the current month, 35 percent or more of the producer milk of members of the association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) at plants specified in paragraph (a) or (b) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b) or (c) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(e) Two or more plants operated by the same handler and located in the marketing area may qualify for pool plant status as a unit by together meeting the requirements specified in paragraph (a) of this section and subject to all of the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process Class I or Class II products, using 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator in Class I or Class II products, and must be located in a pricing zone providing the same or lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit must be filed by the handler with the market administrator prior to the first day of the month for which such status is desired to be effective. The unit shall continue from month to month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

(f) The applicable shipping percentages of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made

to plants regulated under the other Federal order than are made to plants regulated under the order in this part, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

§ 1131.8 Nonpool plant.

See § 1000.8.

§ 1131.9 Handler.

See § 1000.9.

§ 1131.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area during the month;

(b) Receives fluid milk products from own farm production or milk that is fully subject to the pricing and pooling provisions of the order in this part or another Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products;

(e) Does not distribute fluid milk products to a wholesale customer who also is serviced by a plant described in § 1131.7(a), (b), or (e), or a handler described in § 1000.8(c) that supplied the same product in the same-sized package with a similar label to the wholesale customer during the month; and

(f) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the operation of the distributing plant are the personal enterprise of, and at the personal risk of, such person in his/her capacity as a producer-handler.

§ 1131.11 [Reserved]

§ 1131.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1131.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1131.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I;

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order; and

(5) A dairy farmer whose milk is received at a pool plant if during the month milk from the same farm is received at a nonpool plant (except a nonpool plant that has no utilization of milk products in any class other than Class III or Class IV) other than as producer milk under the order in this part or some other Federal order. Such a dairy farmer shall be known as a *dairy farmer for other markets.*

§ 1131.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk) and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's production of such dairy farmer is physically received at a pool plant during the month;

(2) The total quantity of milk diverted by a handler in any month shall not exceed 50 percent of the total producer milk caused by the handler to be received at pool plants and diverted;

(3) Diverted milk shall be priced at the location of the plant to which diverted;

(4) Any milk diverted in excess of the limits prescribed in paragraph (d)(2) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by such producer as producer milk during the month will not be subject to § 1131.12(b)(5); and

(5) The delivery day requirement in paragraph (d)(1) of this section and diversion percentage in paragraph (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise the delivery day requirement or the diversion percentage must be issued in writing at least one day before the effective date.

§ 1131.14 Other source milk.

See § 1000.14.

§ 1131.15 Fluid milk product.

See § 1000.15.

§ 1131.16 Fluid cream product.

See § 1000.16.

§ 1131.17 [Reserved]

§ 1131.18 Cooperative association.

See § 1000.18.

§ 1131.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1131.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on the forms prescribed by the market administrator, as follows:

(a) With respect to each of its pool plants, the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c);

(2) Receipts of milk from handlers described in § 1000.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products; and

(6) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler described in § 1131.10 shall report:

(1) The pounds of milk received from each of the handler's own-farm production units, showing separately the production of each farm unit and the number of dairy cows in production at each farm unit;

(2) Fluid milk products and bulk fluid cream products received at its plant or acquired for route disposition from pool plants, other order plants, and handlers described in § 1000.9(c);

(3) Receipts of other source milk not reported pursuant to paragraph (d)(2) of this section;

(4) Inventories at the beginning and end of the month of fluid milk products and fluid cream products; and

(5) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

(e) Each handler not specified in paragraphs (a) through (d) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1131.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1131.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) The month;

(2) The producer's name and address;

(3) The daily and total pounds of milk received from the producer;

(4) The total butterfat content of such milk; and

(5) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1131.32 Other reports.

In addition to the reports required pursuant to § 1131.30 and § 1131.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1131.40 Classes of utilization.

See § 1000.40.

§ 1131.41 [Reserved]

§ 1131.42 Classification of transfers and diversions.

See § 1000.42.

§ 1131.43 General classification rules.

See § 1000.43.

§ 1131.44 Classification of producer milk.

See § 1000.44.

§ 1131.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1131.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1131.51 Class I differential and price.

The Class I differential shall be the differential established for Maricopa County, Arizona, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Maricopa County, Arizona.

§ 1131.52 Adjusted Class I differentials.

See § 1000.52.

§ 1131.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1131.54 Equivalent price.

See § 1000.54.

Uniform Prices

§ 1131.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (e) of this section and subtracting from that total amount the value computed in paragraph (f) of this section. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts;

(b) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding steps of § 1000.44(b) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(c) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and

butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(d) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from plants regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(e) Multiply the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding steps of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(f) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1131.61 Computation of uniform prices.

On or before the 11th day of each month, the market administrator shall compute a uniform butterfat price, a uniform skim milk price, and a uniform price for producer milk receipts reported for the prior month. The report of any handler who has not made payments required pursuant to § 1131.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations.

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices and dividing the sum of such values by the total pounds of such butterfat.

(b) *Uniform skim milk price.* The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Combine into one total the values computed pursuant to § 1131.60 for all handlers;

(2) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1131.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the pounds of butterfat by the butterfat price computed in paragraph (a) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1131.60(e); and

(6) Subtract not less than 4 cents and not more than 5 cents.

(c) *Uniform price.* The uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the uniform skim milk price for the month pursuant to paragraph (b) of this section times .965.

§ 1131.62 Announcement of uniform prices.

On or before the 11th day after the end of the month, the market administrator shall announce the uniform prices for the month computed pursuant to § 1131.61.

Payments for Milk

§ 1131.70 Producer-settlement fund.

See § 1000.70.

§ 1131.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 13th day after the end of the month (except as provided in § 1000.90). Payments due the market administrator shall be deemed not to have been made until the money owed has been received at the market administrator's office, or deposited into the market administrator's bank account. Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1131.60.

(b) The sum of:

(1) The value at the uniform prices for skim milk and butterfat, adjusted for plant location, of the handler's receipts of producer milk; and

(2) The value at the uniform price as adjusted pursuant to § 1131.75 applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1131.60(e).

§ 1131.72 Payments from the producer-settlement fund.

No later than the 14th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1131.71(b) exceeds the amount computed pursuant to § 1131.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1131.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraphs (b) and (c) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) *Partial Payment.* For each producer who has not discontinued shipments as of the 25th day of the month, payment shall be made so that it is received by the producer on or before the 27th day of each month (except as provided in § 1000.90) for milk received from such producer during the first 15 days of the month at not less than 1.3 times the lowest class

price for the preceding month less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, a payment computed as follows shall be made so that it is received by each producer one day after the payment date required in § 1131.72:

(i) Multiply the hundredweight of producer skim milk received times the uniform skim milk price for the month;

(ii) Multiply the pounds of producer butterfat received times the uniform butterfat price for the month;

(iii) Multiply the hundredweight of producer milk received times the plant location adjustment pursuant to § 1131.75; and

(iv) Add the amounts computed in paragraph (a)(2)(i), (ii), and (iii) of this section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer, subject to approval by the market administrator; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) Two days prior to the dates on which partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity except as the operator of a pool plant, the payment shall be an amount not less than 1.3 times the lowest class price for the preceding month multiplied by the hundredweight of milk.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available for skim milk and butterfat at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment shall be the classified value of such milk as determined by multiplying the pounds of skim milk and butterfat assigned to each class pursuant to § 1000.44 by the class prices for the month at the receiving plant's location, and subtracting from this sum the partial payment made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1131.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce pro rata his payments pursuant to such paragraphs, but by not more than the amount of such underpayment. Payments to producers shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund. In the event the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or the lawful claimant, as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association described in § 1000.9(a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month, and identity of the producer;

(2) The daily and total pounds and the total pounds of butterfat content of producer milk;

(3) The minimum rate at which payment to the producer is required pursuant to the order in this part;

(4) The rate used in making payments if the rate is other than the applicable minimum rate;

(5) The amount, rate per hundredweight, and nature of each deduction claimed by the handler; and

(6) The net amount of payment to the producer or cooperative association.

§ 1131.74 [Reserved]

§ 1131.75 Plant location adjustments for producers and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1131.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1131.73 and 1000.76.

§ 1131.76 Payments by handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1131.77 Adjustment of accounts.

See § 1000.77.

§ 1131.78 Charges on overdue accounts.

See § 1000.78.

Administrative Assessment and Marketing Service Deduction

§ 1131.85 Assessment for order administration.

See § 1000.85.

§ 1131.86 Deduction for marketing services.

See § 1000.86.

PART 1135—MILK IN THE WESTERN MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1135.1 General provisions.

Definitions

1135.2 Western marketing area.
1135.3 Route disposition.
1135.4 Plant.
1135.5 Distributing plant.
1135.6 Supply plant.
1135.7 Pool plant.
1135.8 Nonpool plant.
1135.9 Handler.
1135.10 Producer-handler.
1135.11 Proprietary bulk tank handler.
1135.12 Producer.

1135.13 Producer milk.
1135.14 Other source milk.
1135.15 Fluid milk product.
1135.16 Fluid cream product.
1135.17 [Reserved]
1135.18 Cooperative association.
1135.19 Commercial food processing establishment.

Handler Reports

1135.30 Reports of receipts and utilization.
1135.31 Payroll reports.
1135.32 Other reports.

Classification of Milk

1135.40 Classes of utilization.
1135.41 [Reserved]
1135.42 Classification of transfers and diversions.
1135.43 General classification rules.
1135.44 Classification of producer milk.
1135.45 Market administrator's reports and announcements concerning classification.

Class Prices

1135.50 Class prices, component prices, and advanced pricing factors.
1135.51 Class I differential and price.
1135.52 Adjusted Class I differentials.
1135.53 Announcement of class prices, component prices, and advanced pricing factors.
1135.54 Equivalent price.

Producer Price Differential

1135.60 Handler's value of milk.
1135.61 Computation of producer price differential.
1135.62 Announcement of producer prices.

Payments for Milk

1135.70 Producer-settlement fund.
1135.71 Payments to the producer-settlement fund.
1135.72 Payments from the producer-settlement fund.
1135.73 Payments to producers and to cooperative associations.
1135.74 [Reserved]
1135.75 Plant location adjustments for producer milk and nonpool milk.
1135.76 Payments by a handler operating a partially regulated distributing plant.
1135.77 Adjustment of accounts.
1135.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1135.85 Assessment for order administration.
1135.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674, and 7253.

Subpart—Order Regulating Handling

General Provisions

§ 1135.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1135. In this part 1135, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1135.2 Western marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Idaho Counties

Ada, Adams, Bannock, Bear Lake, Bingham, Blaine, Boise, Bonneville, Camas, Canyon, Caribou, Cassia, Elmore, Franklin, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Oneida, Owyhee, Payette, Power, Twin Falls, Valley, and Washington.

Nevada Counties

Elko, Lincoln, and White Pine.

Oregon Counties

Baker, Grant, Harney, Malheur, and Union.

Utah

All of the state of Utah.

Wyoming Counties

Lincoln and Uinta.

§ 1135.3 Route disposition.

See § 1000.3.

§ 1135.4 Plant.

See § 1000.4.

§ 1135.5 Distributing plant.

See § 1000.5.

§ 1135.6 Supply plant.

See § 1000.6.

§ 1135.7 Pool plant.

Pool Plant means a plant or unit of plants specified in paragraphs (a) through (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section.

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or §_____.7(b) of any other Federal milk order, from which during the month 25 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 25 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which during the month the quantity of bulk fluid milk products transferred or diverted to plants described in paragraph (a) or (b) of this section is 35 percent or more of the total Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1135.12(b)) and handlers described in § 1000.9(c) and § 1135.11, including milk diverted by the plant operator, subject to the following conditions:

(1) A supply plant that has qualified as a pool plant during each of the immediately preceding months of September through February shall continue to so qualify in each of the following months of March through August unless the plant operator files a written request with the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such request. A plant withdrawn from pool supply plant status may not be reinstated for any subsequent month of the March through July period unless it qualifies as a pool plant on the basis of milk shipments;

(2) A pool plant operator may include as qualifying shipments milk diverted to pool distributing plants pursuant to § 1135.13(c);

(3) Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage; and

(4) No plant may qualify as a pool plant due to a reduction in the shipping percentage pursuant to paragraph (f) of this section unless it has been a pool supply plant during each of the immediately preceding 3 months.

(d) A milk manufacturing plant located within the marketing area that is operated by a cooperative association if, during the month or the immediately preceding 12-month period ending with the current month, 35% or more of such cooperative's member producer milk (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk

fluid milk products (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) at plants specified in paragraph (a) or (b) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b) or (c) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(e) Two or more plants located in the marketing area and operated by the same handler may qualify for pool plant status as a unit by together meeting the requirements specified in paragraph (a) of this section and subject to the following additional requirements:

(1) At least one of the plants in the unit must individually qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process Class I or Class II products, using 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator in Class I or Class II products, and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit must be filed by the handler with the market administrator prior to the first day of the month for which such status is to be effective. The unit shall continue from month to month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

(f) The applicable shipping percentages of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under the order in this part, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

§ 1135.8 Nonpool plant.

See § 1000.8.

§ 1135.9 Handler.

In addition to the handlers defined in § 1000.9, handler shall include a person meeting the standards set forth in § 1135.11.

§ 1135.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area during the month;

(b) Receives fluid milk products from own farm production or milk that is fully subject to the pricing and pooling provisions of the order in this part or another Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler's own enterprise and are operated at its own risk.

§ 1135.11 Proprietary bulk tank handler.

Any person, except a cooperative association, with respect to milk that it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such person and which is delivered during the month for the account of such person to the pool plant of another handler or diverted pursuant to § 1135.13, subject to the following conditions:

(a) Such person must operate a plant located in the marketing area at which milk is processed only into Class II, Class III, or Class IV products; and

(b) Prior to operating as a handler pursuant to this paragraph, such person must submit to the marker administrator a statement signed by the applicant and the operator of the pool plant to which the milk will be delivered specifying that the applicant will be the responsible handler for the milk.

§ 1135.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any

person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1135.13; or

(2) Received by a handler described in § 1000.9(c) or § 1135.11.

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is delivered to an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1135.13(d);

(3) A dairy farmer whose milk is diverted to a pool plant by a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I;

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order; and

(5) A dairy farmer whose milk was received at a nonpool plant during the month from the same farm (except a nonpool plant that has no utilization of milk products in any Class other than Class III or Class IV) as other than producer milk under the order in this part or any other Federal order. Such a dairy farmer shall be known as a *dairy farmer for other markets.*

§ 1135.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer, a handler described in § 1000.9(c), or a handler described in § 1135.11. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) or in § 1135.11 in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant, a cooperative association described in § 1000.9(c), or a proprietary bulk tank handler described in § 1135.11, to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's milk production of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until one day's milk production has been physically received as producer milk at a pool plant;

(2) Of the quantity of producer milk received during the month (including diversions) the handler diverts to nonpool plants not more than 90 percent;

(3) Two or more handlers described in § 1000.9(c) may have their allowable diversions computed on the basis of their combined deliveries of producer milk which they caused to be delivered to pool plants or diverted during the month if each has filed a request in writing with the market administrator before the first day of the month the agreement is to be effective. The request shall specify the basis for assigning overdiverted milk to the producer deliveries of each according to a method approved by the market administrator.

(4) Diverted milk shall be priced at the location of the plant to which diverted;

(5) Any milk diverted in excess of the limits prescribed in paragraph (d)(2) of this section shall not be producer milk. If the diverting handler, cooperative association, or proprietary bulk tank handler fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler, cooperative association, or proprietary bulk tank handler during the month to a nonpool plant shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by such producer as producer milk during the month will not be subject to § 1135.12(b)(5); and

(6) The delivery day requirement in paragraph (d)(1) and the diversion percentage in paragraph (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise the delivery day requirement or the diversion percentage must be issued in writing at least one day before the effective date.

§ 1135.14 Other source milk.

See § 1000.14.

§ 1135.15 Fluid milk product.

See § 1000.15.

§ 1135.16 Fluid cream product.

See § 1000.16.

§ 1135.17 [Reserved]

§ 1135.18 Cooperative association.

See § 1000.18.

§ 1135.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1135.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator receives the report on or before the 7th day after the end of each month, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler that operates a pool plant pursuant to § 1135.7 shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and pounds of solids-not-fat other than protein (other solids), contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c) and § 1135.11; and

(ii) Receipts of milk from handlers described in § 1000.9(c) and § 1135.11;

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of

skim milk, butterfat, milk protein, and other nonfat solids, as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in §§ 1000.9(c) or 1135.11 shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, and the pounds of solids-not-fat other than protein (other solids) contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1135.31 Payroll reports.

(a) On or before the 21st day after the end of each month, each handler that operates a pool plant pursuant to § 1135.7 and each handler described in § 1000.9(c) and in § 1135.11 shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1135.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1135.32 Other reports.

In addition to the reports required pursuant to §§ 1135.30 and 1135.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1135.40 Classes of utilization.

See § 1000.40.

§ 1135.41 [Reserved]

§ 1135.42 Classification of transfers and diversions.

See § 1000.42.

§ 1135.43 General classification rules.

See § 1000.43.

§ 1135.44 Classification of producer milk.

See § 1000.44.

§ 1135.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1135.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1135.51 Class I differential and price.

The Class I differential shall be the differential established at Salt Lake County, Utah, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Salt Lake County, Utah.

§ 1135.52 Adjusted Class I differentials.

See § 1000.52.

§ 1135.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1135.54 Equivalent price.

See § 1000.54.

Producer Price Differential

§ 1135.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants, and of each handler described in § 1000.9(c) and each handler described in § 1135.11, with respect to milk that was not received at a pool plant, by adding the amounts computed in paragraphs (a) through (h) of this section and subtracting from that total amount the value computed in paragraph (i) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44 (a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such nonfat components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76 (a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

(1) Multiply the hundredweight of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) Class II value.

(1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value.

(1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value.

(1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding step of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(f) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(g) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3) (i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from plants regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated

fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(i) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1135.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1135.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1135.60 for all handlers required to file reports prescribed in § 1135.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1135.60 by the protein price, the other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1135.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1135.60(h); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1135.62 Announcement of producer prices.

On or before the 12th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) [Reserved]

(g) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1135.70 Producer-settlement fund.

See § 1000.70.

§ 1135.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 14th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1135.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1135.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

(3) [Reserved]

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1135.60(h) by the producer price differential as adjusted pursuant to § 1135.75 for the location of the plant from which received.

§ 1135.72 Payments from the producer-settlement fund.

No later than the 15th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1135.71(b) exceeds the amount computed pursuant to § 1135.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1135.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) *Partial payment.* On or before the 25th day of each month (except as provided in § 1000.90) to each producer an amount not less than 1.2 times the lowest class price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized in writing by such producer to be made from payments due pursuant to this paragraph.

(2) *Final payment.* On or before the 17th day of the following month (except as provided in § 1000.90), not less than an amount computed by the sum of the following:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1135.75;

(ii) The pounds of butterfat in producer milk received times the butterfat price for the month;

(iii) The pounds of protein in producer milk received times the protein price for the month;

(iv) The pounds of other solids in producer milk received times the other solids price for the month;

(v) [Reserved]

(vi) Less any payments made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer

and plus or minus adjustments for errors in previous payments to such producer subject to approval by the market administrator; and

(viii) Less deductions made for marketing service pursuant to § 1000.86.

(b) One day prior to the dates on which partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be an amount not less than 1.2 times the lowest class price for the preceding month multiplied by the hundredweight of milk.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* For the total quantity of bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant, the final payment shall be at not less than the total value of such products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under § 1000.44, as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I prices to be used shall be the prices effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price; and

(viii) Add together the amounts computed in paragraphs (b)(3)(i) through (vii) of this section and from that sum deduct any payment made pursuant to paragraph (b)(1) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1135.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association by not more than the amount of such underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer settlement fund, and in the event the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(e) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) [Reserved]

(5) The minimum rate or rates at which payment to the producer is required pursuant to the order in this part;

(6) The rate used in making payment if the rate is other than the applicable minimum rate;

(7) The amount, or rate per hundredweight, or rate per pounds of component, and the nature of each deduction claimed by the handler; and

(8) The net amount of payment to the producer or cooperative association.

§ 1135.74 [Reserved]

§ 1135.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1135.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1135.73 and 1000.76.

§ 1135.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1135.77 Adjustment of accounts.

See § 1000.77.

§ 1135.78 Charges on overdue accounts.

See § 1000.78.

Administrative Assessment and Marketing Service Deduction

§ 1135.85 Assessment for order administration.

See § 1000.85.

§ 1135.86 Deduction for marketing services.

See § 1000.86.

Dated: August 23, 1999.

Michael V. Dunn,

Under Secretary, Marketing and Regulatory Programs.

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Federal Register

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Part III

Federal Trade Commission

16 CFR Part 460

Trade Regulation Rule: Labeling and Advertising of Home Insulation; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 460

Trade Regulation Rule: Labeling and Advertising of Home Insulation

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (''Commission'') proposes commencing a rulemaking proceeding to amend its Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation (''R-value Rule'' or ''Rule''). The purpose of the rulemaking is to streamline and increase the benefits of the Rule to consumers and sellers, minimize its costs, and respond to the development and utilization of new technologies to make American homes more energy efficient and less costly to operate. This document: First, summarizes public comments the Commission received in response to a request for comments about the need for the rule and its benefits and burdens; second, proposes amendments to recognize technological advances in R-value testing and specimen preparation procedures, and to clarify and streamline the Rule's requirements; and third, solicits comments on the proposed amendments and additional issues.

DATES: Written comments must be submitted on or before November 15, 1999.

ADDRESSES: Five paper copies of each written comment should be submitted to the Office of the Secretary, Federal Trade Commission, Room 159, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580. All comments also should be submitted, if possible, in electronic form, on a 3½ inch personal computer diskette, with a label on the diskette stating the name of the commenter and the name and version of the word processing program used to create the document. Programs based on DOS are preferred. Files from other operating systems should be submitted in ASCII text format. Individuals filing comments need not submit multiple copies or comments in electronic form. Comments alternatively may be submitted by electronic mail (e-mail) to <rvalue@ftc.gov>. Submissions should be identified as ''ANPR Comment, R-value Rule, 16 CFR Part 460.''

FOR FURTHER INFORMATION CONTACT: Kent C. Howerton or James G. Mills, Attorneys, Federal Trade Commission, Washington, DC 20580, (202) 326–3013 or (202) 326–3035 (voice), or (202) 326–3259 (FAX).

SUPPLEMENTARY INFORMATION:

I. Introduction

According to the U.S. Department of Energy (''DOE''), the typical U.S. family spends close to $1,300 each year on energy bills. DOE statistics show that, typically, 44% of a homeowner's utility bill goes for heating and cooling costs. DOE states that homeowners may be able to reduce their energy bills from 10% to 50% by taking certain steps.[1] One of the major steps is increasing the amount of thermal insulation in their existing homes, or purchasing additional insulation when purchasing new homes.

To assist consumers in reducing energy bills, the President of the United States announced in 1998 the Partnership for Advancing Technology in Housing (''PATH''). PATH is a public/private sector initiative that seeks to expand the development and utilization of new technologies in order to make American homes stronger, safer and more durable; more energy efficient and environmentally friendly; easier to maintain and less costly to operate; and more comfortable and exciting to live in. The PATH effort is expected to result in, among other things, improved energy efficiency and the increased market acceptance of new housing technologies.

The FTC has long recognized the importance of energy expenditures on housing to homeowners and other consumers. In 1979, the Commission promulgated the R-value Rule, 16 CFR Part 460. The R-value Rule requires that thermal insulation manufacturers and other sellers disclose the thermal performance of their products, based on uniform testing procedures adopted by the thermal insulation industry. The purpose of this Rule is to provide consumers with information about thermal insulation products, based on uniform standards, that allows them to make meaningful, cost-based purchasing decisions among competing products. As part of its ongoing program to review all its rules and guides to ensure that they provide the maximum benefits at the lowest cost, the Commission reviewed the R-value Rule in 1995 and adopted amendments in 1996 to support the use of the most current testing procedures available and to streamline the Rule.

To increase further the benefits of the Rule, reduce its costs, and support PATH's goals to make American homes more energy efficient, and less costly to operate, the Commission now proposes to consider amending the Rule to recognize the latest technology available. At this time the Commission proposes only a few limited amendments, which are designed to clarify the Rule, make disclosure requirements consistent for competing types of loose-fill insulation products, require the most current procedures for preparing R-value test specimens and conducting R-value tests, delete disclosures for a type of insulation that no longer is sold, and reduce disclosure requirements for retailers. Regarding these issues, the Commission believes that there is sufficient information to propose amendments. Regarding other issues, the Commission is not proposing amendments at this time, but seeks additional comment that could ultimately result in proposed amendments. The Commission, therefore, requests comments on additional issues, such as whether the Commission should revise the Rule to cover additional products or to require the disclosure of in-use performance values (as opposed to laboratory tests that are conducted under static, uniform conditions) or of the performance of building systems. In addition, the Commission requests comments on whether it should adopt additional test specimen preparation requirements for specific types and forms of insulation products to account for various factors that affect R-values; adopt additional or updated testing requirements; and revise the disclosure requirements for manufacturers' label and fact sheets, advertisements and other promotional materials, and for professional installers, new home sellers, and retailers.

II. The R-Value Rule

The Commission promulgated the R-value Rule on August 29, 1979[2] under section 18 of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 57a. The Rule became effective on September 30, 1980. The Rule specifies substantiation and disclosure requirements for those who sell thermal insulation products for use in the residential market, and prohibits certain claims unless they are true. The primary

[1] The amount of energy savings a particular homeowner can save, of course, will vary depending on individual circumstances. DOE provides recommendations about the amount of insulation homeowners need, based on local heating and cooling costs and climate conditions. DOE's recommendations are based on the cost-effectiveness of the recommended insulation levels. for more information, see <http://www.eren.doe.gov/consumerinfo/energy__>savers/ ≤ on the Internet, or telephone the U.S. Department of Energy's Energy Efficiency and Renewable Energy Clearinghouse (''EREC'') at (800) 363-3732.

[2] Final trade regulation rule (''Statement of Basis and Purpose'' or ''SBP''), 44 FR 50218 (1979).

disclosure required is the insulation product's ''R-value'' ''R-value'' is the recognized numerical measure of the ability of an insulation product to restrict the flow of heat and, therefore, to reduce energy costs. R-values may be expressed per unit of thickness (*e.g.*, one inch) or for the total thickness of a particular insulation product or installation. The higher the R-value, the better the product's insulating ability.

On April 6, 1995, as part of its ongoing regulatory review program, the Commission solicited public comments about the economic impact of and current need for the R-value Rule.[3] 60 FR 17492 (1995). At the same time, the Commission solicited comments on a petition (''Petition'') from Ronald S. Graves, who at that time was a Research Staff Member, Materials Analysis Group, Martin Marietta Energy System, Inc. (which operates Oak Ridge National Laboratory (''ORNL'') for the U.S. Department of Energy (''DOE'')). The Petition requested that the Commission approve an additional (fifth) R-value test procedures, as an optional test procedure for determining the R-value of home insulation under the Rule. The test procedure had been issued by the American Society for Testing and Material (''ASTM''), a voluntary industry standards organization.

In response to the request for comments, the Commission received 42 comments from manufacturers of cellular plastics, cellulosic, mineral fiber, and reflective insulation products; manufacturers of structural insulated panels; trade associations comprised of manufacturers of insulation products and structural insulated panels, professional installers, and roofing contractors; independent technical consultants to industry; a government contractor; and individual consumers.[4]

Thirty of the 31 comments that addressed the current need for the Rule stated that there is a continuing need for the Rule (and its requirements that manufacturers and other sellers substantiate and disclose the R-values of home insulation products). Twenty-four comments described benefits that the current Rule, and the disclosure of R-values and related information, confer on consumers and home insulation sellers, including: (1) Giving consumers the basic thermal performance information (i.e., R-values) they need to select products with the R-value they want; (2) giving consumers R-value information in a uniform manner that facilitates easy comparison of competing products; (3) requiring that R-value claims be substantiated so consumers receive what they are promised; (4) helping consumers save energy (and heating and cooling costs) by preventing misrepresentations about R-values of insulation products; (5) saving consumers money by eliminating marketing practices that lead them to over- or underinsulate; (6) improving the quality and consistency of home insulation and encouraging the development of advanced products; and (7) creating a ''level playing field'' for competing insulation sellers.[5] Most of the comments stated that the costs the Rule imposes on consumers and sellers are minimal.

Based on the comments, the Commission determined that there is a continuing need for the Rule, published its determination to retain it, and adopted several technical, non-substantive amendments to support the use of the most current testing procedures available and to streamline the Rule.[6] 61 FR 13659, at 13659–62, 13665 (1996). The comments also discussed other issues and recommended that the Commission consider additional Rule amendments. These comments, the Commission's discussion of the issues the comments raised, proposed revisions to the Rule, and objectives and regulatory alternatives to the proposed revisions, are summarized in Part IV.

III. Overview of the Rule[7]

A. Products Covered

The R-value Rule covers all ''home insulation products.'' Under the Rule, ''insulation'' is any product mainly used to slow down the flow of heat from a warmer area to cooler area, for example, from the heated interior of a house to the exterior during the winter through exterior walls, attic, floors over crawl spaces, or basement. ''Home insulation'' includes insulation used in all types of residential structures. The Rule automatically covers new types or forms of insulation marketed for use in the residential market, whether or not they are specifically referred to in the Rule. The Rule does not cover pipe insulation, or any type of duct insulation except for duct wrap. The Rule does not cover insulation products sold for use in commercial (including industrial) buildings. It does not apply to other products with insulating characteristics, such as storm windows or storm doors.

Home insulation includes two basic categories: ''mass'' insulations and

[3] The Commission previously reviewed the Rule in 1985 under the Regulatory Flexibility Act, 5 U.S.C. 610, to determine the economic impact of the Rule on small entities. Based on that review, the Commission determined that: there was a continuing need for the Rule; there was no basis to conclude that the Rule had a significant impact on a substantial number of small entities; there was no basis to conclude that the Rule should be amended to minimize its economic impact on small entities; the Rule did not generally overlap, duplicate, or conflict with other regulations; and technological, economic, and other changes had not affected the Rule in any way that would warrant amending the Rule. 50 FR 13246 (1985).

[4] The April 6, 1995 request for comments is filed as document number B172394. The comments filed in response to the request for comments are listed in the attached Appendix, alphabetically according to the citation abbreviations used in this notice. The comments are filed as document numbers B17239400001, B17239400002, etc. In today's notice, the comments are cited as #01, #02, etc. They are available for inspection in Room 130 at the Commission's Headquarters at 600 Pennsylvania Avenue, NW, Washington, DC.

[5] In addition to these benefits, one comment explained that utility companies have embraced the Rule and developed their own energy savings programs that depend on the Rule to protect consumers. The comment also stated that state departments of consumer affairs have used the Rule as a model in writing their regulations, which has led to state enforcement that has generated publicity and educated consumers.

[6] These amendments: (1) Revised section 460.5 of the Rule to allow the use of an additional ASTM test procedure as an optional, but not required, test procedure to determine the R-value of home insulation; (2) revised section 460.5 to require the use of current, updated versions of other ASTM R-value test methods cited in the rule; (3) added an Appendix summarizing the exemptions from specific requirements of the Rule that the Commission previously granted for certain classes of persons covered by the Rule; and (4) revised section 460.10 of the Rule to cross-reference the Commission's enforcement policy statement for foreign language advertising in 16 CFR 14.9 and deleted the previous Appendix to the Rule because it merely repeated the text of 16 CFR 14.9.

[7] This part of the notice outlines the coverage and requirements of the R-value Rule. Home insulation sellers should be aware, however, that additional Commission rules or guides may also apply to them. For example, the Commission's rules concerning Disclosure of Written Consumer Product Warranty Terms and Conditions, and the Pre-sale Availability of Written Warranty Terms, 16 CFR Parts 701 and 702, specify requirements concerning warranties for home insulation products; the Commission's Guides for the Use of Environmental Marketing Claims, 16 CFR Part 260, address the application of section 5 of the FTC Act, 15 U.S.C. 45, to environmental advertising and marketing claims (e.g., claims concerning the amount of recycled material a product contains). Further, section 5 of the FTC Act declares that unfair or deceptive acts or practices are unlawful, and requires that advertisers and other sellers have a reasonable basis for advertising and other promotional claims before they are disseminated. See Deception Policy Statement, Letter from the Commission to the Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives (Oct. 14, 1983), reprinted in Cliffdale Assocs., Inc., 103 F.T.C. 110 (1984); Statement of Policy on the Scope of the Consumer Unfairness Jurisdiction, Letter from the Commission to the Honorable Wendell H. Ford, Chairman, Consumer Subcommittee, Committee on Commerce, Science, and Transportation, U.S. House of Representatives, and the Honorable John C. Danforth, Ranking Minority Member, Consumer Subcommittee, Committee on Commerce, Science, and Transportation, U.S. Senate (Dec. 17, 1980), reprinted in International Harvester Co., 104 F.T.C. 949 (1984); and Policy Statement Regarding Advertising Substantiation, 49 FR 30999 (1984), reprinted in Thompson Medical Co., 104 F.T.C. 839 (1984).

''reflective'' insulations. Mass insulations reduce heat transfer by conduction (through the insulation's mass), convection (by air movement within and through the air spaces inside the insulation's mass), and radiation. Reflective insulations (primarily aluminum foil) reduce heat transfer not through the mass of the product, but, when installed facing an airspace, by increasing the thermal resistance of the airspace by reducing heat transfer by radiation through it. 44 FR at 50219. Within these basic categories, home insulation is sold in various types (''type'' refers to the material from which the insulation is made, e.g., fiberglass, cellulose, polyurethane, aluminum foil) and forms (''form'' refers to the physical form of the product, e.g., batt, dry-applied loose-fill, spray-applied, boardstock, multi-sheet reflective).

B. Parties Covered

The Rules applies to home insulation manufacturers, professional installers, retailers who sell insulation to consumers for do-it-yourself installation, and new home sellers (including sellers of manufactured housing). It also applies to testing laboratories that conduct R-value tests for home insulation manufacturers or other sellers who use the test results as the basis for making R-value claims about home insulation products.

C. Purpose of the Rule

The main reason consumers purchase home insulation is to reduce energy expenditures to heat and cool their homes. To assist consumers, the Rule requires sellers (including insulation manufacturers, professional installers, new home sellers, and retailers) to disclose the insulation product's R-value and related information, prior to retail sale, based on uniform, industry-adopted standards. This information enables consumers to evaluate how well a particular insulation product is likely to perform, to determine whether the cost of the insulation is justified, and to make meaningful, cost-based purchasing decisions among competing products.

D. Basis for the Rule

The Commission issued the R-value Rule to prohibit, on an industry-wide basis, specific unfair or deceptive acts or practices. When it issued the Rule, the Commission found that the following acts or practices were prevalent in the home insulation industry and were deceptive or unfair, in violation of section 5 of the FTC Act, 15 U.S.C. 45: (1) Sellers had failed to disclose R-value, and caused substantial consumer injury by impeding the ability of consumers to make informed purchasing decisions, 44 FR at 50222–23; (2) the failure to disclose R-values, which vary significantly among competing home insulation products of the same thickness and price, misled consumers when they bought insulation on the basis of price or thickness alone, *Id.* at 50223; (3) sellers had exaggerated R-values, often failing to take into account factors (*e.g.*, aging, settling) known to reduce thermal performance, *Id.* at 50223–24; (4) sellers had failed to inform consumers about the meaning and importance of R-value, which consumers need to understand R-values, *Id.* at 50224; (5) sellers had exaggerated the amount of savings of fuel bills that consumers could expect, and often failed to disclose that savings will vary depending on the consumer's particular circumstances, *Id.*; and (6) sellers had falsely claimed that consumers would qualify for tax credits through the purchase of home insulation, or that products had been ''certified'' or ''favored'' by federal agencies, *Id.*

E. Requirements of the Rule

The Rule requires that manufacturers and others who sell home insulation determine and disclose each product's R-value (and related information—*e.g.*, thickness, coverage area per package) on package labels and manufacturers' fact sheets. R-value ratings vary among different types and forms of home insulations and among products of the same type and form. The Rule requires that R-value claims to consumers about specific home insulation products be based on uniform R-value test procedures that measure thermal performance under ''steady-state'' (*i.e.* ''static'') conditions.[8] Mass insulation products may be tested under any of the test methods, reflective insulation products must be tested according to either ASTM C 236–89 (1993) or ASTM C 976–90, which can determine the R-value of insulation systems (such as those that include one or more air spaces).[9] The tests must be conducted at a mean temperature of 75°F. The tests on mass insulation products must be conducted on the insulation material alone (excluding any airspace).

When it promulgated the Rule, the Commission found that certain factors, such as aging or settling, affect the thermal performance of home insulation products. 44 FR at 50219–20, 50227–28. To ensure that R-value claims take these factors into account, the Rule mandates that the required R-value tests for polyurethane, polyisocyanurate, and extruded polystyrene insulation products be conducted on test specimens that fully reflect the effect of aging,[10] and for loose-fill insulation products on test specimens that fully reflect the effect of settling.[11]

Specific disclosures must be made: (1) By manufacturers on product labels and manufacturers' fact sheets; (2) by professional installers and new home sellers on receipts or contracts; and (3) by manufacturers, professional installers, and retailers in advertising and other promotional materials (including those on the Internet) that contain an R-value, price, thickness, or energy-savings claim, or compare one type of insulation to another. Manufacturers and other sellers must have a ''reasonable basis'' for any energy savings claims they make.[12]

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[8] Section 460.5 of the Rule requires that the R-values of home insulation products be based on one of the following R-value test procedures adopted by ASTM: (1) ASTM C 177–85 (Reapproved 1993): Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transition Properties by Means of the Guarded-Hot-Plate Apparatus (''ASTMC C 177–85 (1993)''or ''Guarded Hot Plate''); (2) ASTM C 236–89 (Reapproved 1993): Standard Test Method for Steady-State Thermal Performance of Building Assemblies by Means of a Guarded Hot Box (''ASTM C 236–89 (1993)'' or ''Guarded Hot Box''); (3) ASTM C 518–91: Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus (''ASTM C 518–91'' or ''Heat Flow Meter''); (4) ASTM C 976–90; Standard Test Method for Thermal Performance of Building Assemblies by Means of a Calibrated Hot Box (''ASTM C 976–90'' or ''Calibrated Hot Box'')); and (5) ASTM C 1114–95; Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Thin-Heater Apparatus (''ASTM C 1114–92''or ''Thin-Heater Apparatus''). R-values determined according to ASTM C 177–85 (1993) or ASTM C 518–91 must be reported in accordance with ASTM C 1045–90: Standard Practice for Calculating Thermal Transmission Properties from Steady-Heat Flux Measurements (''ASTM C 1045–90''). The Commission gave manufacturers and others the option of choosing among those test procedures because it determined that all are highly accurate and reproducibly steady-state test methods that yield uniform and reliable results. 44 FR at 50226; Final rule, 55 FR 10053, at 10054 (1990); Final rule, 61 FR 13659, at 13662–63 (1996). ASTM reviews and revises each of these procedures periodically. Under section 460.7 of the Rule, the Commission will accept, but not require, the use of a revised version of any of these standards 90 days after ASTM adopts and publishes the revision. The Commission may, however, reopen the rulemaking proceeding during a 90-day period or at any later time to consider whether it should require use of the revised procedure or reject it under section 460.5 of the Rule. 61 FR at 13663.

[9] The R-value of a single-sheet reflective insulation product may be determined according to an alternative method. See Part IV.D.2, *infra.*

[10] See Part IV.C.1.a, *infra.*

[11] See Part IV.C.2.a, *infra.*

[12] Although the Rule does not specify how energy savings claims must be substantiated, the Commission explained that scientifically reliable measurements of fuel use in actual houses or reliable computer models or methods of heat flow calculations would meet the reasonable basis standard. 44 FR at 50233–334. Sellers other than manufacturers can rely on the manufacturer's claims unless they know or should know that the manufacturer does not have a reasonable basis for the claims.

IV. Discussion of Comments, Proposed Amendments, Objectives, and Regulatory alternatives

This part of the notice summarizes and discusses the issues raised by the comments, including suggestions that the Commission revise the Rule. In analyzing the comments, the Commission has considered whether the suggested revisions would further the Commission's objective of ensuring that consumers receive information about home insulation products prior to purchase in a uniform, reliable, and substantiated manner, so that they can evaluate how well a particular product is likely to perform and make meaningful, cost-based purchasing decisions. In addition, the Commission has considered alternatives to amending the Rule to impose new requirements on an industry-wide basis, such as dealing with questionable claims or practices on a case-by-case basis, or exploring other mechanisms such as consumer and business education or industry self-regulation. Below, the Commission explains, on an issue-by-issue basis, whether it proposes amending the Rule as suggested by the comments. Both Parts IV and V include specific issues and questions on which the Commission solicits public comments.

A. Disclosing Thermal Performance of Additional Products

1. Residential Pipe and Duct Insulations

Comments

Dr. Kenneth E. Wilkes, for ORNL, recommended amending the Rule to include pipe insulations and all types of duct insulations, and listed the applicable ASTM test methods that apply to these products. Dr. Wilkes stated that the disclosure of R-value information would provide important information for purchasers of these products.[13]

Discussion

The Commission excluded pipe insulation based on uncontroverted evidence in the original rulemaking proceeding that it was used primarily to prevent moisture condensation on low temperature lines, not for energy conservation; that R-value was not a reliable basis for comparing the performance of pipe insulations; and that pipe insulations were not commonly advertised in terms of energy-savings potential.[14] Similarly, it excluded duct insulations other than duct wrap because only duct wrap was used extensively in the residential setting. 44 FR at 50238 n.170. The Commission's staff has reviewed current consumer advertising for these products and found no information to indicate that these facts have changed. Unless interested parties have information that sellers are misrepresenting the thermal performance of these products to consumers, the Commission will not propose extending the Rule to cover them.

2. Non-residential Insulations

Comments

Two comments suggested extending the Rule to cover insulation products used in all buildings, not just residential applications. Dr. David W. Yarbrough, for Tennessee Technological University (''TN Tech.''), asserted that extending the Rule to cover commercial building insulations would improve the energy efficiency of buildings and would contribute to the nation's energy conservation effort without imposing a measurable increased cost on manufacturers.[15] Dr. Wilkes, for ORNL, stated that the Rule has improved both the marketplace and the technology for home insulations and contended that similar improvements are needed in the commercial market and would occur if the Rule's coverage were expanded.[16] In contrast, Celotex stated that the Commission should not extend the Rule to cover commercial applications because commercial insulations are purchased primarily by professional architects, engineers, and specification writers.[17]

Discussion

Although applying the Rule to thermal insulation products used in commercial buildings might provide information to purchasers that could improve the energy efficiency of buildings, and otherwise prove useful, the comments do not demonstrate that sellers of commercial insulations are engaged in unfair or deceptive acts or practices that would justify expanding the Rule. Furthermore, in many instances, thermal insulation purchasing decisions for commercial building applications are made by architects or engineers. These professionals may require R-value and other performance information based on circumstances different than the uniform approach the Commission determined was necessary to provide accurate and understandable information to individual consumers to compare competing products and make purchasing decisions.

In limiting the disclosure requirements to materials distributed ''for consumer use,'' the Commission recognized that insulation manufacturers often prepare detailed, technical data for building industry professionals, who should already be informed concerning thermal insulation performance. The Commission also recognized that manufacturers may wish to provide these professionals with additional information or with information in a different form from that required for consumer use. 44 FR at 50225.

For these reasons, the Commission does not propose extending the Rule to cover sales to the commercial market. If interested parties have evidence that sellers in this market are misrepresenting the thermal performance of insulation products or are engaging in other unfair or deceptive practices, however, the Commission invites them to submit this information.

B. Disclosing In-Use Thermal Performance Values

1. Performance of Insulations in Actual Use

Eleven comments discussed seasonal and other variables that can affect the R-value of insulation products in actual use, and suggested that the Rule does not sufficiently account for these factors.[18]

Comments Regarding Factors That Affect Performance in Attics During Winter Conditions

Ten of these comments discussed the reduction in R-value of very low density fibrous insulations (*e.g.*, those at approximately 0.7 pounds per cubic foot or less) installed in open or vented attics that can result from convective currents when the outside temperature (and that in the attic) is particularly low.[19] CIMA stated that when the Rule was promulgated it was assumed that R-

[13] ORNL/Wilkes, #29, at 3.

[14] See Final Staff Report to the Federal Trade Commission and Proposed Trade Regulation Rule (16 CFR Part 460), July 1978 (''Staff Report''), at 21–22, 188.

[15] TN Tech, #26, at 1.

[16] ORNL/Wilkes, #29, at 3.

[17] Celotex, #25, at 1.

[18] Benchmark #04, at 1; Regal, #16, at 3; CIMA, #19, at 3–5; GreenStone/Tranmer, #20, at 2; BASF, #21, at 1; Hamilton, #22, at 1–2; ECI, #23, at 1; Superior, #27, at 1; ORNL/Wilkes, #29, at 4–5; GreenStone/Smith, #32, at 2: Tascon, #35, at 2.

[19] Regal, #16, at 3; CIMA, #19, at 3–5; GreenStone/Tranmer, #20, at 2; Hamilton, #22, at 1–2; ORNL/Wilkes, #29, at 4–5; GreenStone/Smith, #32, at 2; Tascon, #35, at 2.

value was relatively unchanging over a wide range of temperatures. CIMA asserted that subsequent research by ORNL has shown a reduction of steady-state R-values caused by convective heat loss in very low density fiber insulation materials during very cold periods, when the temperature difference (delta T) between the heat area of a home and its cold attic becomes particularly great. CIMA stated that this phenomenon can reduce the steady-state R-value of affected products from 10% of a delta T of 50 °F to 55 °F (17 °F to 25 °F in the attic of a home heated to 72 °F) to as much as 40% at a delta T of 90 °F (−18 °F in the attic of a home heated to 72 °F), which can occur during the most severe winter conditions in some portions of the United States. CIMA recommended that the Commission require that insulation manufacturers provide winter design correction factors in coverage charts to compensate for R-value erosion due to convective heat loss, and require that, if insulation material is not subject to R-value loss under cold conditions, the manufacturer state on the package label that the insulation is not subject to convective heat loss at winter attic temperatures above −20 °F.[20]

Dr. Wilkes, for ORNL, pointed out that tests on very low density loose-fill fiberglass insulations with an airspace above the insulation (as in an open attic application) gave R-values that decreased by more than 50% from those determined at a mean test temperature of 75 °F value, when they were tested with a delta T greater than 72 °F and a mean test temperature of 70 °F. Dr. Wilkes explained that ASTM is developing a method of determining the thermal performance of attic insulations during winter conditions, ASTM C 1373,[21] and suggested that the Commission incorporate it into the Rule when it is adopted. This method is still under consideration by ASTM.

Mr. Tranmer, for GreenStone, asserted that several factors in addition to R-values that are determined under steady-state conditions have a major effect on product performance, such as air permeability and temperature differential. Mr. Tranmer stated that a measurement known as the Rayleigh number[22] provides a more complete indication of the effect that the combination of R-value, air permeability, and temperature differential have on insulation materials under specific conditions, and that it represents a more accurate measure of insulating capabilities than R-value alone. He suggested that the Commission require the Rayleigh number on packages and promotional materials to give consumers a better measure of the overall effectiveness of insulation products.[23]

Mr. Tranmer also recommended that the Commission specify testing with the ORNL Large Scale Climate Simulator to provide more accurate information for all attic insulation products, and that these products be tested at temperatures from −20°F to +120°F to provide consumers with performance information specific to a particular climate zone. He stated that, while the cost of testing in this apparatus is approximately $20,000 (significantly more than the usual R-value test), the benefits through increased energy savings would more than offset the increase in testing costs.[24]

Citing research that heating energy consumption can vary 25% to 38% in structures insulated to the same nominal R-value with different insulation materials, CIMA similarly asserted that, by focusing only on R-value, the current Rule has the effect of misleading consumers into thinking that R-value is the only consideration when buying or specifying insulation. Recognizing that presently there is no perfect solution to this dilemma, CIMA suggested that Commission expand the Rule to require manufacturers to disclose Rayleigh numbers for materials under specific conditions. CIMA asserted that the Rayleigh number combines the effects of R-value, air permeability, and temperature difference to produce an expression of relative insulation performance.

Comments Regarding Factors That Affect Performance Under Winter Versus Summer Conditions

One commenter, Superior, contended that the R-value test procedures presently required as the primary means of identifying heat transfer are no longer valid, because they were developed almost exclusively for winter conditions. Superior asserted that, with the post-World War II advent of air conditioning and a higher concern for summer comfort, the primary mode of heat transfer that should be measured is radiant heat. Superior explained that R-value is a component of conductive heat transfer, while radiant heat should be measured by its emissivity,[25] and contended that reflective insulations with one-half or less the steady-state R-value of fiberglass will stop more heat transfer into the home during summer conditions. Superior recommended that the Commission require manufacturers of all insulations to disclose winter and summer performance values, with the summer value determined according to a test procedure other than R-value tests, which have very little significance for radiant heat transfer during summer conditions.[26]

Discussion

The Rule requires that R-values be determined according to ASTM test methods that provide R-value measurements under ''steady-state'' or ''static'' laboratory conditions. These test methods do not take into account transient environmental factors, such as air circulation, that can have a significant effect on insulation performance in actual use (*i.e.*, on site, or *in situ*). When it promulgated the Rule, the Commission determined that, notwithstanding this limitation, these steady-state tests were the most reliable and accurate test methods available. In addition, evidence on the rulemaking record indicated that, although environmental conditions might affect the R-value number determined in steady-state tests, these conditions would affect competing home insulation products in approximately the same manner. Accordingly, the Commission

[20] CIMA, #19, at 3–4.

[21] Standard Practice for Determination of Thermal Resistance of Attic Insulation Systems Under Simulated Winter Conditions (''ASTM C 1373'').

[22] The Rayleigh number is a measure of the tendency of air to move. In the context of very low density thermal insulations installed on the floor of an open attic during very cold periods, the Rayleigh number is a ratio between the buoyant force of warmer air (the air at the bottom of the insulation near the heated interior of the house) attempting to move upward and the resistance of the insulation fibers against that upward air movement. The higher the number, the stronger the buoyant force, and the greater the reduction of the insulation's steady-state R-value.

[23] GreenStone/Tranmer, #20, at 2–3, *See also* GreenStone/Smith, #32, at 2 (Rule leads consumers to believe that R-value is the most important factor in comparing insulations; not sufficient merely to state that other factors may affect insulation thermal performance if other important factors can be quantified; require testing for air permeability, R-value, and temperature difference to enable disclosure of a relative insulation performance factor (Rayleigh Number)), Hamilton, #22, at 2 (effects of convective heat loss on R-value could be communicated to consumers by an ''air resistance index'' number to give them a reference to compare insulation for certain applications; bag label should include warning about convection effect on lighter-density materials below 20 °F); Tascon, #35, at 1–2 (require determination of the effects of air convection on R-value and depiction of that effect at representative temperatures on coverage charts; require disclosure of the Rayleigh number); Regal, #16, at 3 (insulation performance and cost effectiveness should address not only R-value, but also resistance to heat flow and to convective effects under winter design conditions.).

[24] GreenStone/Tranmer, #20, at 2–3.

[25] ''Emissivity'' is a numerical measurement of the ability of a surface to reflect back radiant heat transfer. It is expressed as a number between 0.0 and 1.0. The lower the emissivity, the greater the ability to reflect radiant heat back. The inverse of emissivity is the product's ''reflectivity'' (also called the ''reflectance'').

[26] Superior, #27, at 1.

determined that use of the ASTM steady-state R-value test methods would permit fair comparisons of product R-values on a standardized basis to provide consumers with a reliable, uniform, and comparative base for their purchasing decisions. 44 FR at 50225–26. At the same time, while the Rule requires that R-values claimed must be based on the uniform test methods specified in the Rule, manufacturers and other sellers may provide additional, truthful, substantial information voluntarily to consumers about the manner in which their products perform in actual use.

The Commission recognizes that the testing of insulation products by means of steady-state laboratory testing procedures may not duplicate precisely the performance of an insulation product *in situ*. The thermal performance of any insulation product in actual use, however, is a highly complex subject that involves a broad range of parameters, including the design characteristics of the building and the specific application in which the product is installed (*e.g.*, open attic, enclosed wall cavity), the geographical location, outside and inside temperatures, air and moisture movement, proper installation, and other variables. Determining the disclosing R-values under these varying circumstances, only some of which may apply to a particular use by a specific consumer, could result in multiple R-value disclosures that might overload rather than assist consumers in comparing insulation products and making purchase decisions. For these reasons, the Commission does not at this time propose specific amendments to require disclosures regarding *in situ* performance or multiple R-values for different uses.

Consumers, however, could benefit from the most up-to-date, accurate, and useful information, based on the best available research and substantiation. For example, in areas where a significant delta T is predictable, consumers might want to install additional insulation to take into account the reduction in R-value that might occur during extreme conditions, or consider installing a higher density product. The Commission, therefore, solicits comments on the alternatives to steady-state R-values (*e.g.*, Rayleigh numbers, R-value disclosures based on temperature ranges for different regions of the country or for different applications) suggested by the commenters, or other alternatives, that would provide consumers with accurate, meaningful, and understandable information relevant to their individual circumstances. The Commission requests that commenters address: (1) Specific alternative measurements that are available to describe the *in situ* use of home insulation products better than the steady-state R-values required by the rule; (2) which *in situ* conditions should be accounted for (and why); (3) whether (and how and to what extent) different types or forms of home insulation products perform differently under specific *in situ* conditions, and how significant this different performance is under specific circumstances (*e.g.*, how much would the difference in performance in actual use make on the consumer's annual fuel bill); (4) whether accepted test methods are available to measure *in situ* performance (and the identity of specific test methods); (5) how the results of *in situ* performance measurements could be described in a meaningful manner to consumers; and (6) the benefits and costs to consumers and sellers that would be associated with the use of the alternatives. Among other things, comments are requested to include data such as consumer research that demonstrate whether disclosures of *in situ* performance would be meaningful and understandable to consumers.

2. Performance of Building System Components That Include Insulation

Comments

Four manufacturers of structural insulation panels (building systems products that include insulation as a major component) [27] and a trade association representing such manufacturers [28] supported requiring the thermal efficiency testing of insulation systems, rather than testing only individual insulation products. These comments asserted that the Structural Insulated Panel (''SIP'') industry is penalized by reporting R-values of the insulation components as the measure of the thermal efficiency of panel system because such R-values do not adequately represent the energy efficiency and thermal effectiveness of the panel systems in comparison to insulated panels may appear to have the same total R-value as some fiberglass batts used in stick construction, ''[in a typical installation, using EPS foam in a structural insulated panel, the EPS panel outperforms [a] fiberglass batt by 20%.''

Three of the manufacturers [29] and the trade association, however, apparently recognized that additional research and development would be necessary before the Commission could require the testing and disclosure of systems performance values. These comments recommended that the Commission, along with several other federal agencies, work with industry to develop consensus testing procedures to consider factors such as air infiltration, thermal bridging, and moisture effects on the performance of building systems, and provide resources for testing and evaluation of the thermal performance and energy efficiency of construction systems.

Discussion

The Rule covers home insulation products, including products made up of home insulation and other components (such as structural insulation panels) when they are marketed primarily to slow down the flow of heat. These comments appear to be concerned primarily that the Rule may penalize them by requiring that they disclose the R-value of the insulation component of their panels, instead of the thermal performance of their panels compared to the use of competing home insulation products in other types of building construction. Although the Rule requires that those who market home insulation test and disclose the R-value of their insulation, it does not restrict sellers from providing additional information about how their products perform in actual use, if they are able to substantiate their claims. The comments acknowledge that additional research would be required to develop the procedures necessary to implement a requirement that sellers include in their R-value disclosures information about how their products perform in various types of construction, which would depend on multiple variables. Even if such procedures were developed, as a practical matter, it might be extremely difficult, and perhaps impossible, to draft testing and disclosure requirements that could take such variables into account in a manner that would be meaningful to consumers, and where the benefits (*e.g.*, better information for consumers) outweighed the additional costs (*e.g.* for additional testing and disclosures) that would be imposed.

Accordingly, while the commission acknowledges the concerns underlying these comments, it has determined not to propose amending the Rule at this time to require the disclosure of insulation performance based on testing of home insulation products in different types of applications. The Commission

[27] Porter, #03; BASF, #21; Insulspan, #33; Fischer Sips, #36.

[28] SIPA, #11.

[29] BASF, #21; Insulspan, #33; FischerSips, #36.

encourages interested parties to pursue the additional testing and research that support a system-type disclosure format, and the Commission's staff is available to provide advice about the type of documentation that would be necessary for the Commission to propose formal testing and disclosure requirements that include these applications.

C. Disclosing R-values that Account for Factors Affecting R-value

The comments described in this section addressed issuers relating to the Rule's R-value test specimen preparation requirements for specific types and forms of home insulation products. All home insulation products are covered by the Rule, regardless of whether they are specifically referred to in the test specimen preparation requirements or other provisions of the Rule. That is, they must be tested for R-value under the test procedures specified in section 460.5 of the Rule and the R-value results of those tests must be disclosed to consumers. In some instances the Rule specifies how test specimens must be prepared for R-value tests. In other instances it does not, either because the Commission determined it was not necessary to specify R-value test specimen preparation requirements, or because those products were not being sold when the Commission conducted the original rulemaking. These comments suggested adopting updated test specimen preparation requirements or specifying test specimen preparation requirements not currently required by the Rule.[30]

1. Aging

a. Cellular Plastics Insulations

Certain types of cellular plastics insulations (polyurethane, polyisocyanurate, extruded polystyrene boardstock insulations) are manufactured in a process that results in a gas other than normal air being incorporated into the voids in the products. This gives the product an initial R-value higher than it would have if it contained normal air (as do other types of insulations). A chemical process, known as aging, causes the R-value of these insulations to decrease over time as the gas is replaced by normal air. 44 FR at 50219–20. The length of this aging process, which may continue over several years, depends on whether the product is faced or unfaced, the permeability of the facing, how well the facing adheres to the product, and other factors.

The Rule addresses this aging process by requiring that R-value tests be performed on specimens that ''fully reflect the effect of aging on the product's R-value.'' Section 460.5(a)(1) of the Rule accepts the use of the ''accelerated aging'' procedure in General Services Administration (''GSA'') purchase Specification HH–I–530A (which was in effect at the time the Commission promulgated the Rule) as a permissible ''safe harbor'' procedure, but also allows manufacturers to use ''another reliable procedure.'' 44 FR at 50227–28. The ''accelerated'' procedure was designed to age these insulations in a shorter period than they would age under normal usage conditions. Under the ''accelerated aging'' method in the GSA specification, test specimens are aged for 90 days at 140 °F dry heat.

GSA amended its specification in 1982 to allow the use of an optional aging procedure (in addition to the ''accelerated'' method) under which test specimens are aged for six months at 73 °F± 4 °F and 50 percent ±5 percent relative humidity (with air circulation to expose all surfaces to the surrounding environmental conditions). An industry group, the Roof Insulation Committee of the Thermal Insulation Manufacturers Association (''RIC/TIMA''), specified the use of similar conditions in a technical bulletin it adopted at about the same time. In response to adoption of the alternative aging procedure by GSA and RIC/TIMA, the Commission's staff advised home insulation sellers that the alternative procedure appeared to be reliable and could be used to age cellular plastics insulations. The staff cautioned, however, the manufacturers of insulations faced with materials that significantly retard aging may need to age test specimens for a longer period of time, and that the staff would consider whether the alternative procedure was acceptable for specific products on a case-by-case basis.[31]

Comments Regarding Which Aging Procedures Should Be Required

Ten comments addressed how the Rule should treat the reduction in R-values that occurs when cellular plastics insulation products age.[32] Two recommended requiring the use of aging procedures in current ASTM specifications; one recommended requiring the use of a different method being developed by ASTM; and one association (representing 37 manufacturers) and two manufacturers appear to question the accuracy of current aging procedures in determining long-term performance.

Celotex and PIMA [33] recommended deleting the reference to the aging procedures in former GSA Specification HH–I–530A and instead requiring the use of the aging procedures in ASTM C 1289–95 (for faced polyisocyanurate and faced polyurethane),[34] ASTM C 591–85 (for unfaced polyisocyanurate and unfaced polyurethane),[35] and ASTM C 578–92 (for polystyrene).[36] The aging procedures in these ASTM specifications are essentially the same as the optional procedures contained in the revised GSA specification, although ASTM C 591–94 specifies that aging must be conducted according to the 180-day procedure.

Dr. Wilkes, for ORNL, stated that the Rule's aging requirement should be improved and modified to account for technological changes. He reported that ASTM was developing a new method of determining the aged R-value of unfaced cellular plastics board stock insulations and those with permeable facings based on R-value tests of thin samples sliced from the center of the boards (which ASTM has now adopted as ASTM C 1303–95).[37] Under this method, a thin

[30] In some instances, comments suggested that a specific test specimen preparation procedure, although appropriate for the most products of a certain type and form, might not be appropriate for a specific product, for example, a loose-fill cellulose insulation product with a lower than normal initial density. In such instances, these comments suggested that use of *in situ* data to determine test specimen preparation might be preferable to the specific procedure designated in the Rule. Although the Commission is not proposing to amend specific test specimen preparation requirements in the Rule to include such a provision, manufacturers may file petitions for exemption from the Rule's test specimen preparation requirements under section 18(g) of the FTC Act, 15 U.S.C. 57a(g). Petitioners should submit evidence substantiating why the test specimen preparation procedure required by the Rule is not appropriate for a particular product and why an alternative procedure or method would be appropriate. The Commission will determine whether to grant an exemption based on the petition, substantiating evidence submitted with the petition, and public comments.

[31] *See, e.g.*, staff opinion letter dated May 5, 1983, to Manville Corporation. GSA thereafter rescinded its specification (along with other insulation specifications) and now requires that insulations purchased by the federal government comply with ASTM insulation material specifications.

[32] Plymouth, #01, at 1; Big Sky, #05, at 1; Anderson, #08, at 2–3; EPSMA, #13, at 1; Western, #14, at 1–2; NAIMA, #24, at 2, Celotex, #25, at 4; ORNL/Wilkes, #29, at 3–4; PIMA, #30, at 5–6; AFM, #35, at 1.

[33] Celotex, #25, at 4; PIMA, #30, at 5–6.

[34] Standard Specification for Faced Rigid Cellular Polyisocyanurate Thermal Insulation Board (''ASTM C 1289–95'').

[35] Standard Specification for Unfaced Preformed Rigid Cellular Polyisocyanurate Thermal Insulation (''ASTM C 591–94''). This is the current version of the specification cited by Celotex and PIMA.

[36] Standard Specification for Rigid, Cellular Polystyrene Thermal Insulation (''ASTM C 578–92'').

[37] Standard Test Method for Estimating the Long-Term Change in the Thermal Resistance of Unfaced

test specimen is sliced from close to the center of the insulation board. R-value measurements are taken over time, normally a 180-day period, and the test specimen is kept in an environmental chamber when R-value tests are not being conducted. The resulting R-values over time are converted into an average value according to a specific mathematical formula. Dr. Wilkes recommended that the Commission adopt this ASTM method as the required procedure for deriving aged R-values for these insulation products.

Dr. Wilkes asserted that a satisfactory aging method for these boardstock insulations with impermeable facers (*e.g.*, aluminum) has not yet been developed. He recommended that the Rule state this fact and require ''direct'' aging of products with impermeable facers (*i.e.*, aging over time of samples as they are produced—at full thickness and with facers attached). Finally, Dr. Wilkes recommended that the Commission delete the phrase ''or another reliable procedure'' because of its lack of specificity.[38]

AMF, for itself and its 37 manufacturing partners, stated that the reporting of different R-values for insulations that use gases, and that are known to lose R-value over time as those gases diffuse, has frustrated the original objective of the Rule to provide, a ''level playing field.'' [39] Plymouth Foam Products complained that ''[s]ome [cellular plastics] foam insulation manufacturers are allowed to represent their products with installed R-values of as high as eight per inch, when, in fact, that value will reduce substantially over the life of the product/structure.'' [40] These comments recommended that the Rule require testing and disclosure of R-values that more accurately reflect the effect of aging on the R-value of cellular plastics insulation products.

Big Sky and Western contended that the practice of aging a test specimen for six months, even at an elevated temperature, does not provide a true picture of the R-value a consumer can expect over the full life of the product.[41] Big Sky suggested three options: (1) A six-month accelerated aging process, with an additional 18-month hold on the test specimens before they are tested for R-value; (2) accelerated aging for 18 months; or (3) holding the test specimens for three years. Western suggested that the Commission adopt an accelerated aging test either from ASTM methods or the Corps of Engineers System.

Discussion Regarding Which Aging Procedures Should Be Required

Requiring manufacturers to age their insulation products for several years before being able to test and market them would impose a significant burden. Instead, the Rule allows the use of the GSA ''accelerated aging'' procedure, or another reliable procedure. Because some of the comments question whether the GSA accelerated aging procedure or the procedures in ASTM specifications are adequate for all types of cellular plastics insulation products (particularly those with less permeable facers), the Commission solicits comments regarding the length of time over which specific types and forms of cellular plastics insulations age (including both unfaced products and those with different kinds of facings); the effect of the aging process on specific types and forms of cellular plastics insulations (*i.e.*, the overall reduction of R-value over time); the accuracy of different aging procedures to reflect long-term aging of specific types and forms of cellular plastics insulation products; which aging procedures the Commission should require for which types of cellular plastics insulation products; the burdens that would be imposed on manufacturers and other sellers by requiring the use of specific aging procedures; and how the Commission should deal with products for which adequate aging procedures do not currently exist (*e.g.*, those with relatively non-permeable facings).

Comments Regarding Which Cellular Plastics Insulations Should Be Aged for R-value Testing

NAIMA recommended requiring R-value testing on aged samples of ''other foam plastic insulation'' products (in addition to the types currently enumerated) and recordkeeping of the age of the test specimen. NAIMA asserted that present and future foam insulations not currently covered by the aging requirement should be tested and labeled to reflect the effects of aging, but did not submit data to demonstrate whether other existing cellular plastics, or foam, insulations are subject to aging. According to NAIMA, the requirement would impose no extra testing or labeling burdens on manufacturers of insulations that are not subject to aging.[42]

Discussion Regarding Which Cellular Plastics Insulations Should Be Aged for R-value Testing

The Commission required R-value testing of aged specimens only for extruded polystyrene, polyurethane, and polyisocyanurate insulations because these were the only types of insulations discussed during the rulemaking proceeding that included blowing agents subject to the aging process. The Commission agrees that manufacturers of additional types of cellular plastics, or foam, insulations that are subject to the aging process should be required to test aged specimens and disclose aged R-values, and to maintain testing records identifying the aging procedure used. The Commission, therefore, solicits comments on what additional types or forms of insulations are subject to the aging process.

b. Reflective Insulations

Comments

NAIMA recommended that the Commission require that reflective (aluminum foil) insulation products be tested for emissivity and R-value ''using samples that fully reflect the effect of aging'' on the product's emissivity and R-value. NAIMA asserted that thermal performance claims for reflective insulations, as for cellular plastics insulations, should reflect the effects of aging (in this case, the accumulation of dust or corrosion of the foil). NAIMA did not submit evidence that dusting or corrosion is a problem that degrades the R-value of reflective insulations in actual applications, and did not suggest a specific test method or procedure that should be used to determine the effects of this type of aging on reflective insulations.[43]

Discussion

The Commission believes that claims for all types of home insulation products should take into account factors that affect the products' thermal performance. The Commission, therefore, invites interested parties to comment on whether dusting or

Rigid Closed Cell Plastic Foams by Slicing and Scaling Under Controlled Laboratory Conditions (''ASTM C 1303–95'').

[38] ORNL/Wilkes, #29, at 3–4.

[39] AFM, #38, at 1.

[40] Plymouth, #01, at 1.

[41] Big Sky, #05 (many manufacturers advertise what they call an aged R-value, when in fact it is only an R-value for insulation aged for six months at elevated temperatures; this R-value is not a true indication of the in-service R-value, which can drop over 30% within three years); Western, #14, at 1–2 (because polyisocyanurate insulation has been sold based on R-values derived after six months of aging under RIC/TIMA 281 or PIMA 100, consumers have been duped into believing they are purchasing insulation that will deliver an R-value of 7.2 per inch for the duration of its service; although the true aged R-value of polyisocyanurate cannot be agreed upon, 5.56 per inch is often used and would be a more realistic figure).

[42] NAIMA, #24, at 2, 4.

[43] Id. at 3.

corrosion of reflective insulations in actual applications is a problem resulting in lower R-values than claimed, the extent of any degradation of R-value, and how the effect of dusting or corrosion on R-value could most accurately be determined.

2. Settling

a. Loose-fill and Stabilized Insulations in Attics

In the original rulemaking proceeding, the Commission determined that all dry-applied loose-fill insulation products tend to settle after being installed in open (or unconfined) areas such as attics. Settling lowers the product's thickness, increases its density, and affects its total R-value.[44] The amount of settling depends on several factors, including the raw materials and manufacturing process used, and the installer's application techniques (which affect the insulation's initial thickness and density).

To ensure that claims made to consumers are based on long-term thickness and density after settling, the Rule requires that the R-value of each dry-applied loose-fill home insulation product for these applications be determined at its ''settled density.'' The Rule requires that manufacturers of dry-applied loose-fill cellulose insulation for attic applications test and disclose the R-value (as well as coverage area and related information) at the long-term, settled density determined according to paragraph 8 of ASTM C 739–91, commonly referred to as the ''Blower Cyclone Shaker'' (''BCS'') test.[45] Because a consensus-based test procedure had not been adopted for determining the long-term, settled density of dry-applied loose-fill mineral-fiber insulation for this type of application, the Rule does not specify the procedure for determining the density of the R-value test specimen, but it requires that R-values claimed to consumers be based on long-term thickness and density after settling.[46]

Since the Commission promulgated the Rule, new forms of loose-fill-type home insulation products have been introduced for use in attic applications, including ''stabilized'' cellulose. ''Stabilized'' cellulose refers to a form of loose-fill cellulose insulation that contains a glue binder and is applied on attic floors with a small amount of liquid. Application of the insulation with the glue binder and liquid purportedly results in lower-density cellulose insulations that do not settle like dry-applied loose-fill cellulose insulations. The Rule does not currently specify a procedure for determining the long-term, settled density of stabilized cellulose insulation.

Comments

Dry-applied Loose-Fill Cellulose. Dr. Wilkes, for ORNL, stated that settling decreases the R-value obtained when a loose-fill insulation product is applied, although limited information exists about the amount of settling that occurs. Dr. Wilkes supported use of the BCS test procedures to determine the settled density of dry-applied loose-fill cellulose insulation. He suggested that the BCS procedure may be inappropriate for new products such as those with initial densities as low as 1.0 to 1.5 pounds per cubic foot. For such products, Dr. Wilkes stated that *in situ* data would be more appropriate than the BCS procedure in determining long-term, settled density, and recommended that the Commission permit manufacturers to submit *in-situ* data to demonstrate the actual settled density of their products.[47]

Dry-applied Loose-Fill Mineral Fiber. Eleven comments addressed how the settled density of dry-applied loose-fill mineral fiber insulation products in open attic applications should be determined for R-value testing.[48] Regal contended that the Rule's objective of creating a level playing field has been compromised because of the failure of GSA, ASTM, and the mineral fiber industry to develop a uniform standard for determining the settled density of dry-applied loose-fill mineral fiber insulations.[49] Other comments agreed.[50] Three stated that this uneven playing field (*i.e.*, requiring cellulose manufacturers, but not mineral fiber manufacturers, to use a specific test procedure) imposes a competitive disadvantage for the cellulose industry.[51] CIMA, for example, stated that the BCS test typically produces 30% settling for loose-fill cellulose, while long-term studies of actual installations rarely find cellulose settling as much as 20%. CIMA asserted that the Rule places the cellulose industry at a competitive disadvantage of as much as 10% to 15% compared to loose-fill fiberglass, and that, if this discrimination has affected the cellulose market share by as little as 5%, it has resulted in an annual revenue loss of approximately $50 million for cellulose producers.

Four comments stated this uneven treatment is unfair to consumers.[52] GreenStone/Smith, for example, stated that mineral fiber manufacturers have not developed a standard test method to measure the settling of loose-fill mineral fiber insulations, but instead claim that if their products are installed at the density they recommend, the amount of settling will be minimal (less than 5%). He asserted that the mineral fiber manufacturers construct coverage charts at this density and represent to consumers that no settling is expected. According to GreenStone/Smith, installers who desire to minimize costs can install loose-fill mineral fiber insulations at less than the density claimed by manufacturers (and at a lower total R-value than claimed), without consumers' knowledge, and thereby save time and material and defraud consumers of the energy savings they anticipate.

As a short-term solution, five comments recommended that the Commission impose a settlement factor of up to 10% or more for dry-applied loose-fill mineral insulation products, pending the adoption of a suitable industry standard to address how much these products settle.[53] Dr. Yarbrough,

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[44] Settling of loose-fill cellulose insulation reduces the product's total R-value, often decreasing it proportionate to the amount of settling. Settling of loose-fill mineral fiber insulation also affects the product's total R-value, but the reduction in total R-value may be less than the reduction in thickness. E.g., ORNL/Yarbrough, #28, at References 1, 2; ORNL/Wilkes, #29, at References 9, 10.

[45] Standard Specification for Cellulosic Fiber (Wood-Base) Loose-Fill Thermal Insulation (''ASTM C 739–91'').

[46] At the time the Commission promulgated the Rule, GSA had proposed adopting a settled density test procedure for loose-fill mineral fiber insulation products similar to the one it had adopted for loose-fill cellulose insulation products. Mineral fiber manufacturers contended, however, that they took settling into account in their coverage charts, and that if their insulations were installed according to their coverage charts, consumers would receive the R-values they claimed. The Commission imposed a general requirement that R-values of dry-applied loose-fill mineral fiber insulations be based on tests that take the adverse effects of settling into account, but did not specify how the settled density was to be determined. 44 FR at 50228. GSA never adopted a procedure for determining the settled density of mineral fiber insulations.

[47] ORNL/Wilkes, #29, at 4.

[48] Regal #16, at 1–2; England, #18, at 3; CIMA, #19, at 2–3; GreenStone/Tranmer, #20, at 2–3; Hamilton, #22, at 3; NAIMA, #24, at 2; TN Tech/Yarbrugh, #26, at 4–5; ORNL/Wilkes, #29, at 4; GreenStone/Smith, #32, at 2; Clayville, #34, at 1–2; Tascon, #35, at 1.

[49] Regal, #16, at 1–2.

[50] England, #18, at 3 1–2; CIMA, #19, at 2–3; GreenStone/Tranmer, #20, at 2–3; Hamilton, #22, at 3; GreenStone/Smith, #32, at 2; Clayville, #34, at 1–2; Tascon, #35, at 1.

[51] CIMA, #19, at 2–3; GreenStone/Tranmer, #20, at 2–3; Clayville, #34, at 1–2.

[52] GreenStone/Tranmer, #20, at 2–3; Hamilton, #22, at 3; GreenStone/Smith, #32, at 2; Clayville, #34, at 1–2.

[53] Regal, #16, at 1–2; England, #18, at 3; CIMA, #19, at 2–3 (impute 10% settling for all loose-fill insulations for which there is no standard settled density methodology published by a recognized, independent materials-standards organization);

for TN Tech., and Dr. Wilkes, for ORNL, suggested that, until a uniform test procedure is developed, manufacturers should determine settled density based on *in situ* data.[54]

Stablized Cellulose. Dr. Wilkes, for ORNL,[55] and Dr. Yarbrough, for TN Tech., [56] stated that the BCS test is inappropriate for determining the settled density of stabilized cellulose insulation. Dr. Yarbrough explained that ''stabilized'' cellulose insulation contains a binder, or other means, for bonding particles in the insulation to reduce settling, and that the fan used in the BCS test breaks the bond. Dr. Wilkes and Dr. Yarbrough recommended allowing the use of *in situ* observations of the degree of settling to establish the settled density at which the R-value of a stabilized cellulose product must be determined. Dr. Yarbrough stated that a methodology for obtaining *in situ* data is available.[57] He explained that an ASTM task group is working on a material specification for stabilized cellulose insulation that he expects will include a method for determining settled density, and recommended that the Commission consider requiring the use of the ASTM standard when it has been adopted by ASTM.[58]

NAIMA recommended requiring that R-value tests on stabilized cellulose insulations be ''done on samples that fully reflect the effect of settling on the product's R-value.'' NAIMA stated that ASTM C 1149 [59] has been modified to include products containing an adhesive that is mixed with water during installation and is intended for use in attic applications. NAIMA stated that a task group is developing a method to determine and quantify the amount of settling.[60]

Discussion

Dry-applied Loose-fill Cellulose. Although the rule requires manufacturers of dry-applied loose-fill cellulose to determine the R-values and coverage of their products at the settled density determined according to the BCS procedure, manufacturers who can demonstrate that the BCS procedure is inappropriate for their products can petition the Commission for an exemption that would allow them to determine the settled density of their products according to a more appropriate methods. See note 30, above.

Dry-Applied Loose-fill Mineral Fiber. The Rule specifies the procedures to be used in determining the settled density only for cellulosic, and not mineral fiber, insulation products. When the Commission promulgated the Rule in 1979, it expected that GSA soon would adopt a specific test procedure for determining the settled density of dry-applied loose-fill mineral fiber insulation products. 44 FR at 50228, 50239 n.239. GSA did not do so, and now accepts the use of ASTM standards, which do not specify procedures for determining the settled density of dry-applied loose-fill mineral fiber insulations.

Reports of studies conducted by Oak Ridge National Laboratory during the 1980s demonstrate that certain loose-fill mineral fiber insulation products can settle following installation, resulting in a reduction of R-value.[61]The results differed in the amount of settling, and the effect of settling on the R-values of the specific insulation products studied, depending on the type of mineral fiber insulations studied (fiberglass versus rock wool products) due to differences in density.

The Commission agrees that it would be preferable to specify a uniform procedure for determining the long-term, settled density of dry-applied loose-fill mineral fiber insulation products. Unfortunately, none of the comments suggested a specific procedure that the Commission could adopt at this time. In addition, the comments that suggested requiring an across-the-board settlement factor of 10% have not submitted documentation that would justify the Commission imposing it on all dry-applied loose-fill mineral fiber insulation products.

The Commission, therefore, solicits comments on specific reliable and uniform procedures that would be appropriate for determining the long-term, settled density of dry-applied loose-fill mineral fiber insulation products, and the submission of data to demonstrate that those procedures will result in uniform and accurate results. For example, the Commission requests any data that demonstrate that any of the following, currently available test procedures, or others, would produce accurate and reliable, long-term settled density results for mineral fiber insulation products in attic applications: the BCS test procedure in ASTM C 739–91 (which currently is required for dry-applied, loose-fill cellulose insulation products); the ''Canadian drop box procedure,'' which previously was proposed by GSA for loose-fill mineral fiber insulations under Federal Specification HH–I–1030B; [62] the British Standard Vibration Test; and the procedure developed in Scandinavia by Dr. Svennerstedt. In the meantime, the Commission will continue to examine the data specific manufacturers use to substantiate their R-value, long-term settled density, and coverage claims.

Stabilized Cellulose. Because of the manner in which stabilized cellulose insulation is installed, the Commission agrees that the BCS test procedure may not be appropriate for determining its long-term, settled density. Further, the Commission does not believe that the procedure for determining density in ASTM C 1149, which NAIMA suggested, is the appropriate measure of the long-term, settled density of stabilized cellulose insulations installed in attic applications. ASTM C 1149 is designed for insulations sprayed onto walls (most often being applied to metal walls in commercial buildings, where they are left exposed, without being covered by an internal wall), and requires that these insulations be able to support themselves in that type of application. The settling characteristics of stabilized cellulose insulations in attic applications are different from those of self-supported insulations sprayed onto walls. ASTM has not yet adopted a specific method for determining the long-term density of stabilized cellulose insulation for attic applications. When ASTM, or others, adopt an appropriate procedure, the Commission will consider whether to require its use. In the meantime, under section 5 of the FTC Act, manufacturers must have a reasonable basis for the density at which they conduct the R-value tests required by the Rule and make R-value claims to consumers.

Loose-fill and Stabilized Insulations Used in Manufactured Housing Attics. No comments addressed whether the procedures currently used to determine the settled density of dry-applied loose-fill insulations or stabilized insulations when they are used in attics of site-built homes are appropriate for determining

GreenStone/Tranmer, #20, at 2 (impute 5% to 10% settling); GreenStone/Smith, #32, at 2–3 (absent a standard test method, require disclosures based on at least 10% settling; if a product has been determined not to settle, require disclosure of that fact as an assurance to consumers); Tascon, #35, at 1 (impute settlement not less than 10% if a technically supportable method of determining settlement has not been established within a reasonable time, *e.g.*, 5 years).

[54] TN Tech/Yarbrough, #26, at 4–5; ORNL/Wilkes, #29, at 4.

[55] ORNL/Wilkes, #29, at 3.

[56] TN Tech/Yarbrough, #26, at 2.

[57] *Id.* at 2, references 1, 2.

[58] *Id.* at 3.

[59] ASTM C 1149–90: Standard Specification for Self-Supported Spray Applied Cellulosic Thermal/Acoustical Insulation (''ASTM C 1149'').

[60] NAIMA, #24, at 2–3.

[61] ORNL/Yarbrough, #28, at Refs. 1, 2; ORNL/Wilkes, #29, at Refs. 9, 10.

[62] *See* 44 FR at 50228, 50239 n.239.

their settled density when they are used in attics of manufactured housing. Industry members have raised this question separately, however, with the Commission's staff. At issue is whether these insulations, which are installed in attic assemblies in a factory and then transported to the site where the manufactured home will be located, settle more, or differently, than those used in site-built homes because of additional vibrations and other factors during transportation. The Commission solicits comments regarding the extent of settling of dry-applied loose-fill insulations and stabilized insulations when they are used in attics of manufactured housing, the density at which the R-value of these insulations should be determined for use in attics of manufactured housing, and how that density should be determined.

b. Loose-fill and Self-supported Insulations in Walls

Dry-applied loose-fill insulations and spray-applied, self, supported insulations can be installed in walls in residential applications. Dry-applied loose-fill insulations normally can only be applied to existing wall cavities (primarily in retrofit applications). Spray-applied, self-supported insulations can be applied to open wall cavities before installation of internal walls.

Dry-applied loose-fill insulations may settle when blown into a confined area, such as an enclosed wall cavity, leaving a gap at the top of the wall cavity if they are not sufficiently compressed during installation. Manufacturers who claim an R-value for a dry-applied loose-fill insulation must disclose the R-value at the applied density, determined according to the R-value test procedures specified in the Rule. The Rule, however, does not specify how manufacturers must determine that density because there was no standard procedure for measuring the applied density in wall applications for all products at the time the Commission promulgated the Rule. Because dry-applied loose-fill insulations installed in closed wall cavities must be compressed during application to ensure that they do not settle, the applied density in wall applications is likely to be greater than the settled density of the product when it is installed in an open attic.

Self-supported, spray-applied insulations, mixed with water and adhesives (also referred to as ''wet-spray'' insulations), are installed pneumatically on-site by professional installers. They may be made of either cellulose or mineral fiber. When applied, this form of insulation requires no support other than the insulation itself or the substrate to which it is attached. These products most often are used in walls in commercial applications, where they may be left exposed after they are installed. They are rarely used in residences, primarily because this application requires the use of more insulation material for a given thickness (*i.e.* the insulation is installed at a higher density and cost), often without any increase in total R-value, and sometimes at a reduced R-value. They are not used in attics because of their additional weight (and cost). Because these products are applied at a greater density than either dry-applied loose-fill or stabilized insulations, they are not likely to settle. Although this form of insulation was not discussed during the original rulemaking proceeding and the Rule does not specify how R-value these specimens must be prepared, it is covered by the Rule if it is sold for use in the residential market. Because the density at which these insulations are applied affects their R-values, the Commission's staff has advised industry members that they should prepare test specimens according to the manufacturer's installation instructions, using equipment, materials, and procedures representative of the manner in which the insulation is applied in the field.

Comments Regarding the Use of Dry-applied Loose-fill Insulations in Wall Cavities

Two comments recommended requiring the disclosure of R-values and related information for loose-fill insulations intended in walls or other enclosed cavities. NAIMA recommended requiring that coverage charts for these products include R-values maximum net coverage area, and minimum weight per square foot for the thicknesses of common cavities (*e.g.* 3½″). NAIMA asserted that separate disclosures for installations of these insulation products in enclosed cavities is necessary to provide guidance about the proper amount of material that must be installed.[63] Mr. Smith, for GreenStone, agreed and suggested requiring disclosure of a coverage chart for ''Gross Coverage,'' for cavities using 2x4 and 2x6 on 16″ center construction. He recommended requiring the disclosure of the density at which the loose-fill insulation should be installed, along with a statement that applications below this density may be subject to settling and may create gaps at the top of or within wall cavities that may significantly reduce the insulating value of the product. Lastly, he stated that the R-value for each of the wall thicknesses claimed must be determined at the applied density the manufacturer recommends.[64]

Discussion Regarding the Use of Dry-applied Loose-fill Insulations in Wall Cavities

The Commission agrees that specific requirements for determining the appropriate density for the R-value test specimen and for disclosures on coverage charts for applications in enclosed wall cavities would be appropriate and desirable. GreenStone's suggestion of requiring a statement of ''applied density'' could provide helpful information to installers in determining whether they have installed the requisite amount of insulation material, but it does not address how that density should be determined. The Commission, therefore, solicits comments on whether there are reliable procedures that could be used to determine the density of dry-applied loose-fill insulations when installed in enclosed wall cavities, and the specific disclosures that should be required (*e.g.*, how coverage area for enclosed wall cavities should be described).

Comments Regarding the Use of Self-Supported Insulations in Wall Cavities

ECI recommended adopting the test specimen preparation procedures in ASTM C 1149 when testing insulations that are sprayed into wall cavities.[65] England recommended requiring use of either HUD UM–80 [66] or ASTM C 1149, both of which apply to spray-applied cellulose insulation, to ensure that R-value and related information is accurate.[67]

Discussion Regarding the Use of Self-supported Insulations in Wall Cavities

The procedures in paragraph 5.1 of ASTM C 1149–90 and in paragraph 9.1.1 of HUD UM–80, which require the R-value test specimens be prepared using the maufacturer's recommended equipment and procedures and at the manufacturer's maximum recommended thickness, appear to be appropriate procedures for preparing R-value test specimens of self-supported, spray-applied cellulose insulation products.

[63] NAIMA, #24, at 5.

[64] GreenStone/Smith, #32, at 3.

[65] ECI, #23, at 1.

[66] U.S. Department of Housing and Urban Development Materials Bulletin No. 80 (''HUD UM–80''), dated October 31, 1979. This specification includes additional requirements, *e.g.*, the surface to which the specimen is to be applied, and post-preparation conditioning.

[67] England, #18, at 2–3.

Accordingly, the Commission proposes amending the Rule to require preparation of R-value test specimens of self-supported, spray-applied cellulose insulation products according to either of these specifications. The Commission solicits public comments regarding the accuracy and reliability of the two procedures, whether the Commission should allow use of either procedure or only one, how the Commission should define specifically the products to which the procedures apply, and whether the same procedures (or others) should be required for other types of spray-applied insulations (*e.g.*, mineral fiber insulations) that are used in residential applications.

Discussion Regarding the Use of Loose-fill Insulations and Self-supported Insulations in Wall Cavities of Manufactured Housing

No comment addressed whether the procedures currently used to determine the settled density of dry-applied loose-fill insulations or self-supported insulations when they are used in wall cavities of site-built homes are appropriate for determining their settled density when they are used in wall cavities of manufactured housing. Industry members have raised this question separately, however, with the Commission's staff. At issue is whether the settling of these insulations, which are installed in wall assemblies in a factory and then transported to the site where the manufactured home will be located, settled more, or differently, than those used in site-built homes because of additional vibrations and other factors during transportation. The Commission solicits comments regarding the extent of settling of dry-applied loose-fill insulations and self-supported insulations when they are used in wall cavities of manufactured housing, the density at which the R-value of these insulations should be determined for use in wall cavities of manufactured housing, and how that density should be determined.

3. Density Variations

The Rule's testing and labeling requirements assume that the long-term settled density of a dry-applied loose-fill insulation product does not change with variations in thickness. The Rule, therefore, simply requires that manufacturers of dry-applied loose-fill cellulose insulation determine the settled density of each product according to the BCS test procedure and test it for R-value at that density, and that manufacturers of dry-applied loose-fill mineral fiber insulation determine the R-value of each product on samples that fully reflect the effect of settling on R-value. As long as the R-value test has been conducted at that density and at the product's ''representative thickness,'' [68] the manufacturer can construct the required coverage chart for various total R-value levels based on the R-value result at the tested density.

Comments

Ivan Smith, for GreenStone, recommended revising section 460.6 of the Rule to require testing of loose-fill insulations at each thickness shown on a label unless there is a limitation caused by the physical constraints of the test equipment. Mr. Smith believes it is likely that density will be different at each different thickness of loose-fill material, and that this variation of density potentially affects the thickness necessary to obtain the claimed total R-value. He contended that this requirement would not result in a substantial expense to the manufacturer.[69]

Discussion

The Commission cannot determine whether it would be appropriate to propose amending the Rule as Mr. Smith recommended without specific data to demonstrate whether or how much the density of particular types of loose-fill insulations varies with differences in thickness. The Commission solicits comments and data, therefore, on whether, and how much, the density of specific loose-fill insulations varies with thickness, the effect of any such variations on the total R-value at different thickness, and how the Commission should amend the Rule to ensure that R-values and related claims for loose-fill insulation products are accurate.

4. Installation in Closed Cavities of Variable Thickness

Comments

Dr. Yarbrough, for TN Tech, stated that the evaluation of the thermal performance of insulations used in attics of manufactured housing represents a special challenge because, in some cases, the roof cavity (and the insulation installed in it) varies in thickness and density. For example, these roof cavities often slope to the edge of the roof assembly, where the cavity may be only 1½″ to 2″ thick. Any insulation (whether it is a batt or blanket, dry-applied loose-fill, or stabilized product) installed in such an application can vary in thickness across the cavity, and may be compressed more than normal in the thinnest portions of the cavity. These factors result in different total R-values at different places. Dr. Yarbrough recommended specifying how R-values for such variable thickness and density applications should be calculated, and suggested using a method such as the one he and others have described in a paper published by the American Society of Mechanical Engineers.[70] He stated that the manner in which R-values are expressed for this type of application could affect a major portion of new manufactured homes and could determine whether insulations installed in these applications achieve the total R-values claimed.[71]

Discussion

The Commission agrees that it is important to address how R-values should be determined and disclosed to consumers where the insulation varies in thickness and/or density in particular applications, so that R-values claimed to consumers under these circumstances will be accurate and determined according to a uniform standard. The Commission solicits comments, therefore, regarding the method (such as that recommended by Dr. Yarbrough) that should be used to determine and disclose R-values under these circumstances, and how different variables (*e.g.*, thickness, density) should be accounted for in the determination.

D. Other Testing Requirements

1. Accreditation of Testing Laboratories

Comments

The Celotex Corporation recommended requiring that testing laboratories either be accredited by the National Voluntary Laboratory Accreditation Program (''NCLAP''), administered by the U.S. Department of Commerce's National Institute of

[68] The mathematical extrapolation of R-value for a mass insulation product from thin-sample tests can be misleading because it fails to recognize that, up to at least some thickness, R-value does not increase linearly with increases in thickness. This is referred to as the ''thickness effect.'' To account for the thickness effect, section 460.6 requires that R-value tests of mass insulations be conducted at the product's ''representative thickness,'' which it defines as the thickness at which the R-value per unit will vary no more than plus or minus two percent with increases in thickness. For thicknesses less than the representative thickness, however, the R-value claimed may be based on testing at the claimed thickness. 44 FR at 50226.

[69] GreenStone/Smith, #32, at 3.

[70] D.W. Yarbrough, R.S. Graves, and D.L. McElroy, Effectiveness of Thermal Insulation in Attic Spaces of Manufactured Homes, Collected Papers in Heat Transfer 1988, K.J. Yang, Ed., The American Society of Mechanical Engineers, HTD-Vol. 104 (1988), at 71–80.

[71] TN Tech/Yarbrough, #26, at 4.

Standards and Technology (''NIST''), for the specific test methods listed in the Rule, or by the International Organization for Standardization (''ISO'') as an ISO/IEC Guide 25 Testing Laboratory. Further, Celotex stated that accreditation as an ISO/IEC Guide 25 Laboratory provides global acceptance of a laboratory's test results.[72]

Discussion

Although accreditation of testing laboratories by a qualified, professional accreditation program generally is useful and important, the Commission is not aware of any significant testing problems with unaccredited laboratories that would justify the Commission's imposing this additional burden under the Rule. Further, to the extent that accreditation of a laboratory provides either domestic or global acceptance of that laboratory's test results, manufacturers and other sellers should already have sufficient incentive to use accredited laboratories, and testing laboratories should have sufficient incentive to seek accreditation, without the Commission imposing an accreditation requirement.

The Rule already includes several interrelated safeguards to ensure testing integrity that make a separate accreditation requirement unnecessary, absent evidence of testing abuse. First, the Rule requires manufacturers to test or have their products tested to substantiate the R-values they claim, and to maintain specific records concerning the testing methods and results. Second, it enables the Commission to analyze the substantiation tests by evaluating the required testing records. Third, it includes a quality control requirement, under which industry members must ensure that the R-value of the insulation they sell is not more than 10% below the R-value they claim. Thus, even if the manufacturer or other covered party has a test result that purports to verify the claimed R-value, the Commission can obtain samples and conduct its own testing to ensure that accurate, properly determined R-values are being disclosed to consumers.

Although the Commission is not proposing to require laboratory accreditation at this time, it solicits comments on the extent to which manufacturers presently use accredited versus nonaccredited labs. In addition, the Commission seeks comments on whether it should require additional recordkeeping to make the records more clearly demonstrate whether the tests have been conducted accurately and in accordance with the required procedures.

2. Test Temperature Requirements

Several test temperature parameters are involved in R-value testing: (1) The temperature on the cold side of the testing apparatus; (2) the temperature on the hot side of the testing apparatus; (3) the mean (or average) test temperature within the test chamber; and (4) the temperature differential (*i.e.*, the temperature spread between the cold and hot sides). The record in the original rulemaking proceeding indicated that variations in these test parameters affected the ASTM steady-state R-value results for mass insulations and reflective insulations differently.

For mass insulations, the record indicated that R-values decreased as the mean test temperature rose, and that this inverse relationship between R-value and mean test temperature was approximately the same for all mass insulations. On the other hand, the record indicated that variations in the temperature differential between the hot and cold sides did not significantly affect the R-value results. For these reasons and other explained below, the Commission determined the R-value tests of mass insulations should be conducted at a mean test temperature of 75 °F, but that it was not necessary to specify a required test temperature differential for testing mass insulations.

For traditional reflective foil insulations, on the other hand, the record indicated that variations in mean test temperature did not affect the R-value results, but that variations in the temperature differential between the hot and cold sides did affect the R-value results. At least at smaller temperature differentials, the record indicated that there was an inverse relationship between R-value and the temperature differential, as the temperature differential increased, the R-value result went down. The Commission determined, therefore, that it was necessary to specify both the mean test temperature and the temperature differential for R-value testing of reflective insulations.

The R-value of a reflective insulation is related to its emissivity.[73] Based on evidence that single-sheet reflective foil insulation products with a given emissivity installed in an airspace of the same thickness and configuration will have the same R-value, the Commission minimized manufacturers' testing burdens by allowing them to use the R-values for those products listed in a specific table published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (''ASHRAE''). Thus, manufacturers of single-sheet reflective insulation products need only to measure the product's emissivity according to a specific ASTM test procedure (or an alternative procedure that provides comparable results)[74] and find the appropriate R-value in the ASHRAE table for that emissivity.[75] The ASHRAE table contained R-values for only certain mean test temperatures and temperature differentials. To ensure that claims were based, to the extent possible, on a standard that would allow comparison on a uniform basis of R-values for single-sheet reflective insulations and mass insulations, the Commission specified that single-sheet reflective insulation manufacturers must use the R-value in the ASHRAE table for a mean test temperature of 50 °F (the table did not include a mean test temperature of 75 °F, so the Commission selected the mean test temperature closest to 75 °F) and a temperature differential of 30 °F.

For multi-sheet reflective foil insulations (used to create multiple airspaces), the record indicated that extrapolation of a total R-value from the ASHRAE R-value for a single airspace was unreliable. 44 FR at 50228. The Commission, therefore, required that R-values be determined through R-value testing according to specific ASTM procedures. So that the results of these tests would be comparable to those for single-sheet insulations and for mass insulations, the Commission determined that the tests must be conducted at a mean test temperature of 75 °F and a temperature differential of 30 °F.

a. Mean Temperature

Comments

Plymouth Foam Products asserted that a mean test temperature of 40 °F would more accurately represent the climate(s) for the majority of the United

[72] Celotex, #25, at 3.

[73] *See* note 25, *supra.*

[74] *See* Part IV.D.5.a.i., *infra*

[75] The values in the table apply only to air spaces of uniform thickness bounded by plane, smooth, parallel surfaces with no leakage of air to or from the space. Further, the table lists only certain emissivities and airspace thicknesses. The Rule specifies that the emissivity must be determined according to ASTM E 408, or another test method that provides comparable results. The R-value of a traditional single-sheet reflective foil insulation product that will be installed in an air space that is not of uniform thickness bounded by plane, smooth, parallel surfaces with no leakage of air to or from the space should be tested according to the Rule's requirements for traditional multi-sheet reflective foil insulations.

Sates than the required 75 °F mean test temperature.[76]

Discussion

The Commission addressed this issue when it originally promulgated the Rule.[77] To ensure that R-values claimed to consumers are made on a uniform basis, the Commission required that R-values disclosed to consumers be based on steady-state ASTM R-value tests conducted at a mean temperature of 75 °F. The Commission concluded that 75 °F (which was incorporated in many voluntary industry standards and federal procurement specifications) would be as effective as any other mean temperature in providing a standard mean test temperature for R-value comparison purposes, although it otherwise had not particular advantage over any other temperature. By requiring that R-value testing be conducted at this mean test temperature, the Commission did not intend to specify a mean test temperature that would be representative of any particular geographical region, or particular season or of actual performance conditions. Indeed the Commission concluded that requiring sellers to test and disclose R-values at a mean temperature representative of any specific geographical region, or season of the year, would yield R-value results that would be inappropriate for other regions or seasons. Further, it concluded that requiring sellers to test and disclose R-values separately for different regions of seasons would yield multiple disclosures that could confuse consumers and discourage them from using R-values in making purchasing decisions. Thus, the Commission selected a single mean test temperature to establish a uniform standard for disclosing R-values. Although the Commission received no new information that would indicate that any other single mean test temperature would be preferable to 75 °F, the Commission invites public comments on this issue, along with comments regarding the testing and the disclosure of *in situ* performance information. See also the discussion in Part IV.B.1, above.

b. Temperature Differential

Comments

One comment recommended amending the Rule to specify the temperature differential. NAIMA recommended requiring not only that R-value tests be preformed at the mean temperature of 75 °F, but also requiring a test temperature differential of ''50 °F ±10 °F.'' NAIMA explained that the thermal properties of a specimen may change both with mean temperature and with the temperature difference across the test specimen, and that data and information at standard temperatures are therefore necessary for valid comparison of thermal properties. NAIMA stated that ASTM C 1058[78] specifies a temperature difference of 50 °F ±10 °F when conducting tests at a mean temperature of 75 °F according to ASTM test methods C 177, C 236, C 581, and C 1114.[79]

Discussion

The Commission agrees that, if current evidence demonstrates that different test temperature differentials affect R-value results, it may be appropriate to consider specifying a test temperature differential in the Rule to ensure the comparability of R-value claims for competing home insulation products. The Commission, therefore, solicits comments on whether, to what extent, and for what types and forms of insulation, variations in the test temperature differential affect R-value results; and what specific test temperature differential(s) the Commission should impose for tests conducted according to each of the R-value test procedures cited in the Rule. See also the discussion in Part IV.B.1, above.

3. Tolerance

Comments Regarding Responsibilities of Manufacturers Versus Installers

NAIMA[80] and ICAA[81] proposed limiting application of the Rule's 10% tolerance limit to manufacturers by replacing the words ''industry member'' with ''manufacturer.''

Discussion Regarding Responsibilities of Manufacturers Versus Installers

The Commission designed the tolerance limit provision to apply to the manufacturer. Strictly speaking, the tolerance does not apply to professional installers or new home sellers. The Rule requires that professional installers and new home sellers apply loose-fill insulations according to the manufacturer's installation instructions, but allows them to rely on the accuracy of the manufacturer's R-value and installation instructions. Installers and new home sellers therefore have the benefit of the 10% tolerance limit for variances occurring in the manufacturing process. But the tolerance is not intended to allow installers or new home sellers to deviate from the manufacturer's installation instructions. Consequently, the Commission proposes amending the Rule to clarify that the tolerance provision applies solely to claims made by manufacturers.

Comments Regarding How the Tolerance Limit Will Be Applied

NAIMA and Dow suggested clarifying the Rule to state more precisely how the tolerance limit would be applied. NAIMA suggested specifically requiring manufacturers to design their products to 100% of the claimed R-value, rather than aiming at the tolerance. NAIMA further recommended that the section require that the R-value of home insulation to be no more than 5% below the listed R-value for the average of four randomly selected samples, and that the R-value of any single sample to be no more than 10% below the listed R-value. NAIMA explained that limiting the tolerance to the average of four samples would make this section of the Rule consistent with current ASTM material standards. Dow asked that the Commission clarify the intent of § 460.8, and suggested the following language to allow some variability in a production lot (rather than simply permitting an R-value of up to 10% below the claimed value):

> The mean R-value of sampled specimens of a production lot must meet or exceed the R-Value shown in a label, fact sheet, ad or other promotional material. No individual specimen can have an R-Value more than 10% below the claimed R-Value.[82]

Discussion Regarding How the Tolerance Limit Will Be Applied

The tolerance limit provision was designed to give manufacturers the flexibility to use the most effective and least burdensome or costly quality control procedures necessary to maintain each product's R-value (and the density necessary to obtain the claimed R-value) within an acceptable limit. At this time, however, the Commission agrees that it would be appropriate to consider whether the Commission should include in the Rule additional, more specific, guidance about how manufacturers should apply the tolerance limit. Possible alternatives include the suggestions made by NAIMA and Dow. Consequently, the

[76] Plymouth, #01, at 1.

[77] 44 FR at 50219, 50227.

[78] Standard Practice for Selecting Temperatures for Evaluating and Reporting Thermal Properties of Thermal Insulation (''ASTM C 1058–92'').

[79] NAIMA, #24, at 1.

[80] Id. at 4.

[81] ICCA/1, #17, at 8. See also Rock Wool Mfg./1, #06 (fully supports ICAA's submittal).

[82] Dow, #37, at 1.

Commission solicits comments on whether and how it should propose amending the tolerance provision, and the benefits and burdens such an amendment would confer on consumers and insulation sellers.

Comments Regarding Sampling Procedures for the Tolerance Limit

NAIMA recommended amending § 460.8 to require manufacturers to select test specimens in accordance with ASTM C 390–79 [83] which is the sampling procedure required by all ASTM thermal insulation standards.[84]

Discussion Regarding Sampling Procedures for the Tolerance Limit

In the original rulemaking proceeding, the Commission concluded that the available sampling standards—specifically ASTM C 390 and Military Standard 105 [85]—were not suitable for inclusion as requirements of the Rule because they were extremely complex and were not designed for sampling from a continual production process but, instead, were ''lot'' sampling procedures designed for use in individual transactions. Accordingly, the Commission left the choice of specific sampling methods to the manufacturer's discretion. Likewise, paragraph 3.1.6 of the current ASTM sampling specification, ASTM C 390–79 (1995), establishes sampling standards applicable to a specific ''lot'' or ''batch'' (which is defined as ''a definite quantity of some product manufactured under conditions of production that are considered uniform''). Although the Rule does not require specific sampling procedures, it requires that manufacturers be able to prove that test samples they select are representative of ongoing production.

To address this issue, the Commission solicits comments on whether manufacturers currently use sampling procedures that do not result in the selection of test specimens that are representative of ongoing production; which specific procedures currently are available for use in sampling from continuing production (or how sampling procedures designed for specific lots could be used to select samples from continuing production); and whether the Commission should require the use of specific sampling procedures.

4. Use of Current Test Data

Comments

Dr. Yarbrough, for TN Tech, asserted that required R-Value disclosures should be based on test data no more than two years old. He contended that normal quality control activities should require more frequent thermal tests than are currently performed, and that this would not unduly burden the industry. He also recommended that, because the properties of thermal insulation can change when the manufacturing process changes, thermal test data should be based on the current manufacturing process and equipment being used.[86] Dr. Yarbrough would exclude reflective insulations from this requirement because the thermal measurements for these products are much more expensive than tests for mass insulations. He recommended that a test on a reflective insulation be considered current if it conforms to ASTM C 1224 and the measurements were made on the product being marketed.[87]

Discussion

When the Commission promulgated the Rule, it considered, but rejected, a recommendation in the Staff Report that the Commission require manufacturers to repeat their R-value substantiation tests every 60 days, coupled with a 5% tolerance limit. The Commission explained that the rulemaking record pointed no single retesting frequency that would be superior for all manufacturers, regardless of the type and amount of insulation they produce and sell and regardless of the variables that might affect the production of each type of insulation product. In addition, the record indicated that there was a limited availability of testing laboratories and testing equipment at that time to conduct the required testing for all manufacturers on a frequent basis.

Instead, the Commission determined to rely on a tolerance limit provision as the governing quality control mechanism.[88] It specified 10% as the acceptable tolerance limit, and required manufacturers to institute in-plant quality control procedures necessary to stay within that tolerance limit. This mechanism was designed to give manufacturers the flexibility to use whatever quality control procedures are necessary to ensure the accuracy of their R-value claims, using the most effective and efficient, but the least burdensome or costly, means possible within their technical expertise. If the manufacturer changed the raw materials used or the manufacturing process, however, the resulting insulation product would be a new home insulation product. The Rule requires manufacturers to conduct a new R-value test on each new home insulation product, and to disclose the R-value (and related information) of each new product based on the new test.

The Commission agrees that it is appropriate to consider whether current conditions would justify the Commission's requiring a more specific retesting quality control mechanism. In this regard, the Commission is interested in comments regarding how frequently manufacturers currently test their insulation products, how much the R-value of current production varies,[89] how frequently manufacturers change their products, whether they retest products that have changed, and what retesting schedule would be most appropriate to ensure the accuracy of R-value claims made to consumers. After considering the comments, the Commission will determine whether it should propose requiring a specific retesting schedule.

5. Determining the Thermal Performance of Reflective Insulations

Two basic forms of reflective insulation products are marketed for use in the residential market: (1) Traditional single-sheet and multi-sheet reflective insulations; and (2) single-sheet radiant barrier reflective insulations. Traditional reflective insulation products normally are installed in closed cavities, such as walls. As explained in Part IV.D.2, above, the Rule requires that manufacturers of traditional reflective insulation products use specific test procedures to determine the R-values of their products, and that manufacturers and other sellers disclose R-values to consumers for specific applications.

Radiant barrier reflective insulations, on the other hand, are installed in attics facing the attic's open airspace. Although radiant barrier reflective insulations are covered by the R-value Rule, R-value claims are not appropriate for them because no generally accepted test procedure exists to determine the R-value of a radiant barrier reflective insulation in an open attic. Sellers who make energy savings claims for radiant barrier insulations, however, must have

[83] The current version of this specification is ASTM C 390–79 (Reapproved 1995): Standard Criteria for Sampling and Acceptance of Preformed Thermal Insulation Lots (''ASTM C 390–79 (1995)'').

[84] NAIMA, #24, at 4.

[85] The version of the military standard in effect at that time was: Sampling Procedures and Tables for Inspection by Attributes, MIL–STD–105D (''Military Standard 105'').

[86] TN Tech/Yarbrough, #26, at 2.

[87] *Id.* at 3.

[88] 44 FR at 50229.

[89] For example, is the R-value of the insulation being produced consistently below the R-value claimed and previously determined, even if it is within the Rule's 10% tolerance?

a reasonable basis for the claims under Section 460.19(a) of the Rule.

a. Traditional Reflective Insulations

i. Single-sheet Products

Comments

Three comments recommended allowing the use of updated or alternative test procedures to measure the emissivity of traditional single-sheet reflective insulations.[90] Celotex and PIMA [91] recommended requiring that emissivity be determined under ASTM E 408–71 (1990),[92] ASTM C 835–82 (1988),[93] or another method that provides comparable results. Dr. Wilkes, for ORNL, reported that ASTM is in the final stages of developing a procedure to measure the emittance of foil sheets with a portable Emissometer, and recommended that the Commission include this procedure in section 460.5(c) when ASTM adopts it.[94]

Discussion

ASTM now has adopted the procedure (ASTM 1371–97) [95] that Dr. Wilkes recommended Dr. Wilkes informed the Commission's staff that the procedure is a very simple, quick measurement, using an instrument that costs about $1,000. He also informed the staff that, while there is no meaningful statistical difference between the results of measurements under ASTM C 1371–97 and ASTM C 835–95, the ASTM C 835–95 procedure is considerably more complicated.

The Commission solicits comments on the accuracy, reliability, and consistency of each of these procedures in measuring emissivity; the costs of conducting the procedures; and whether the Commission should require the emissivity be measured by only one procedure to ensure that measurements of emissivity are accurate and reliable.

ii. Multi-sheet Products

Comments

The five comments that addressed the Rule's R-value testing requirements for traditional multi-sheet reflective foil insulations recommended requiring that R-values be determined according to the procedures specified in ASTM C 1224–93, either in addition to or instead of the two ASTM R-value test procedures specified in the Rule.[96] Dr. Wilkes, for ORNL, explained that ASTM C 1224–93 requires R-value testing according to ASTM C 236 or ASTM C 976, but specifies additional instrumentation for the tests and a method of calculating R-values based on the R-value test procedure measurements. He further recommended requiring that the tests be conducted at the mean test temperature and temperature differential specified in ASTM C 1224–93.[97]

Discussion

Traditional multi-sheet reflective insulations must be tested in an enclosed cavity system that includes air spaces. Testing such a system requires the construction of a test panel to contain the reflective insulation. R-values determined in these systems tests may vary depending on the size and configuration of the test panel, the materials used to construct the test panel, how mean temperature and temperature differential are measured, and the corrections for components such as framing members used in the test panel that are made in the calculation of R-values based on the test results. ASTM C 1224–93 includes requirements concerning the construction of the test panel, verification of the R-value measurement, and calculation of the R-value of the reflective insulation from the R-value measurement of the entire system. The Commission concludes that requiring standardization of these variables would be comparable to the Rule's requirements that test specimens of certain mass insulation products be prepared according to specified procedures and that R-values determined under ASTM C 177–85 (1993) or ASTM C 518–91 be reported in accordance with the requirements of ASTM C 1045–90, and would benefit consumers by making R-value claims for these products more accurate and reliable.

For these reasons, the Commission proposes requiring that R-values for reflective insulations be tested according to ASTM C 236–89 (1993) or ASTM C 976–90 in a test panel constructed according to ASTM C 1224–93, and under the test conditions specified in ASTM C 1224–93, and that the R-values be calculated according to the formula specified in ASTM C 1224–93, from the results of those R-value tests. The Commission solicits comments on this proposal.

b. Radiant Barrier Products

Comments

Dr. Wilkes, for ORNL, states that ASTM is developing a method for evaluating the thermal performance of low-emittance foils used in residential attics to reduce radiative transport across the attic air space. He recommended that the Commission incorporate this method into the Rule once ASTM adopts it.[98]

Discussion

ASTM has now adopted the standard referred to by Dr. Wilkes. The standard, ASTM C 1340–96,[99] incorporates a complicated calculation (and computer program) to determine the heat flux through an attic containing a radiant barrier. The results do not determine an R-value rating, but instead a performance value that might serve as a reasonable basis for energy savings claims (and related performance claims) made about radiant barrier insulations. The Commission solicits comments concerning the specific type of performance the standard measures, how the standard may be used to substantiate energy savings claims or other performance claims for radiant barrier insulations, the types of installations of radiant barrier insulations for which the standard may be used, the accuracy of the determinations made under the standard, and whether the Commission should require that energy savings or other performance claims for radiant

[90] NAIMA, #24, at 3; Celotex, #25, at 4; PIMA, #30, at 6–7. See Part IV.D.2, supra, for a discussion regarding the use of emissivity in determining the R-value of a single-sheet reflective insulation product.

[91] Celotex, #25, at 4; PIMA, #30, at 6–7.

[92] The current version of this specification is ASTM E 408–71 (Reapproved 1996): Standard Test Methods for Total Normal Emittance of Surfaces Using Inspection Meter Techniques (''ASTM E 408–71 (1996)'').

[93] The current version of this specification is ASTM C 835–95: Standard Test Method for Total Hemispherical Emittance of Surfaces from 20 to 1400° C (''ASTM C 835–95'').

[94] ORNL/Wilkes, #29, at 5.

[95] Standard Test Method for Determination of Emittance of Materials Near Room Temperature Using Portable Emissometers (''ASTM C 1371–97'').

[96] NAIMA, #24, at 3 (ASTM C 1224–93 was not developed when the Rule was issued; reference in the Rule to C 236 and C 976 is unnecessary because those standards are incorporated into C 1224); Celotex, #25, at 4; TN Tech, #26, at 3; ORNL/Wilkes, #29, at 6; PIMA, #30, at 6.

[97] ORNL/Wilkes, #29, at 6. ASTM C 1224–93 requires testing at a cavity mean test temperature of 75±4 °F (24±2 °C) with a temperature difference across the insulated cavity of 30±2 °F (16.5±1 °C). These temperature requirements are similar to those currently required by the Rule, but ASTM C 1224–93 specifies that the temperatures are those within the cavity (not including the cavity walls, or the air temperatures inside or outside the house) and incorporates tolerances to allow minor temperature variations.

[98] Id. at 5.

[99] Standard Practice for Estimation of Heat Gain or Loss through Ceilings Under Attics Containing Radiant Barriers by Use of Computer Program (ASTM C 1340–96'').

barrier insulations be based on the standard.

6. Additional Laboratory Procedures for Testing Loose-fill Insulations

Comments

NAIMA recommended that the Commission require testing of loose-fill insulations ''in full conformance with ASTM C 687–93.'' [100] NAIMA explained that C 687 has been significantly improved since the Rule became effective and that it now deals more specifically with test specimen preparation techniques, stabilization times, and measurement of the specimen density in the test area, resulting in a significant improvement in test precision.[101]

Discussion

ASTM C 687–95 (the current ASTM specification) is a standard practice, rather than a test procedure. It specifies procedures to be followed in testing a variety of loose-fill insulations to be used in other than enclosed applications. It is a detailed laboratory procedures guide that appears to be both comprehensive and complicated. In an attempt to minimize burdens imposed by the rule, the Commission limited its testing requirements to the minimums necessary to ensure the accuracy and reliability of test results. The Rule, therefore, specifies only the basic R-value test procedures and test specimen preparation procedures for certain products that are necessary to account for factors that can significantly affect R-value results (*e.g.*, aging, settling). In the original rulemaking proceeding, the Commission considered, but rejected as unnecessary, requiring adherence to more detailed standard practice or standard guide specifications, such as ASTM C 687. Without data substantiating the need to specify detailed laboratory operating procedures, for these insulations or others, the Commission is reluctant to consider imposing additional requirements. The Commission invites public comments, however, on whether and why there is a need to specify in more detail the laboratory procedures that should be followed in preparing test specimens and conducting R-value test procedures, for loose-fill insulations as well as other forms of insulations, and the benefits and burdens from such additional requirements.

E. Other Disclosure Issues

1. Disclosures on Labels and Fact Sheets

a. ''What You Should Know About R-values''

Comments

The Rule requires the manufacturer's fact sheet to include a specific statement entitled ''What You Should Know About R-values'' that explains the meaning of R-value and lists factors consumers should consider when purchasing insulation.[102] Regal suggested that this statement should be more specific in explaining how consumers can determine the amount of insulation they need. Regal commended the Insulation Fact Sheet published by the DOE for providing the best such information for consumers, but contended that it is not readily available in the marketplace. Regal also explained that the DOE ZIP Computer Program can be used to make a cost-benefit analysis for specific insulation products based on their cost per R-value and expected benefits.[103]

Corbond suggested that the current Rule has four negative effects that the Commission should address: (1) The Rule codifies the least effective measure of insulation performance, conductivity, as the sole measure widely used for comparing insulation value; (2) the Rule's emphasis on a product's R-value, as opposed to factors that affect installed performance, retards the development and acceptance of new products that perform better than fiberglass insulations because their performance appears the same when measured by R-value alone; (3) energy codes that require the installation of specific R-values favor products such as fiberglass insulations because the code requirements do not recognize the superior performance of insulations that are not subject to degradation of R-value in actual use due to factors such as venting, wind, convection, and moisture accumulation; and (4) the Rule perpetuates the use of an obsolete product, fiberglass insulation, which requires supplementation by other products and techniques (*e.g.*, foam caulk, house-wrap, sheet vapor barriers, foam insulation sheathing, and venting) to help it do the job it should be able to do on its own.[104]

CIMA and Corbond recommended that the Commission add language to the required statement to address these concerns. CIMA recommended the following statement: [105]

> R-value is important, but it is only one of many factors that affect the actual performance of insulation as installed. Other important factors to consider include air permeability, ability of the insulation to ''tighten'' the building against air infiltration, susceptibility to convective heat loss under cold conditions, and proper installation.

Corbond supported CIMA's suggestion, but recommended the use of an expanded version of the statement:

> R-value is important, but it is only one of the many factors that affect the actual performance of insulation as installed. Other important factors to consider include air permeability, ability of the insulation to ''tighten'' the building against air infiltration, susceptibility to convective heat loss under cold conditions, the potential for moisture permeation and accumulation and its deteriorating effects, and proper installation. Consult your insulation manufacturer for information regarding the true performance efficiency of the insulation under conditions appropriate to your climate.

Discussion

The original purpose of the required explanation in fact sheets was to minimize disclosure burdens on industry members who advertise energy or fuel savings. Instead of requiring them to provide lengthy disclosures in ads that claim energy savings, the ad simply could refer consumers to information in the manufacturer's fact sheet.[106] This approach would ensure that the explanatory information would be made available to consumers, while keeping advertisements less cluttered.

The Commission recognizes that, as the comments have indicated, more information could be provided in the explanation about how consumers can purchase the most cost-effective amount of insulation, and that there are additional factors that can affect R-value and performance in actual use. The Commission drafted the statement to balance consumers' need for information against keeping the statement simple enough to be useful and not detract from its basic purpose—making consumers aware that there are

[100] The current specification is: Standard Practice for Determination of Thermal Resistance of Loose-fill Building Insulation (''ASTM C 687–95'').

[101] NAIMA, #24, at 2.

[102] The required statement is:

READ THIS BEFORE YOU BUY

What You Should Know About R-values.

The chart shows the R-value of this insulation, R means resistance to heat flow. The higher the R-value, the greater the insulating power. Compare insulation R-values before you buy.

There are other factors to consider. The amount of insulation you need depends mainly on the climate you live in. Also, your fuel savings from insulation will depend upon the climate, the type and size of your house, the amount of insulation already in your house, and your fuel use patterns and family size. If you buy too much insulation, it will cost you more than what you'll save on fuel.

To get the marked R-value, it is essential that this insulation be installed properly.

[103] Regal, #16, at 2–3.

[104] Carbond, #41, at 1–2.

[105] CIMA, #19, 4–5.

[106] 44 FR at 50233–34.

various factors they should consider when purchasing products to make their homes more energy efficient.

Because new information may be available about the factors that affect insulation performance, the Commission is willing to consider revising the explanation. The Commission is concerned, however, that many consumers would not understand the meaning or impact of a general cautionary statement that contains terms such as ''air permeability,'' ''susceptibility to convective heat loss under cold conditions,'' ''the potential for moisture permeation and accumulation and its deteriorating effects.'' The Commission, therefore, solicits comments regarding how the explanation could be revised to provide the most useful information to assist consumers in making purchasing decisions. In particular, the Commission is interested in receiving information about the factors that should be included, why those factors are important, how the information could be explained in a meaningful and helpful manner, and how the information would assist consumers in making purchasing decisions. Among other things, commenters are requested to include data such as consumer perception studies that demonstrate whether suggested alternative disclosures would be meaningful to consumers.

b. Disclosures for Batt, Blanket, and Boardstock Insulations

Subsections 460.12(b)(1) and 460.12(B)(4) of the Rule require that manufacturers label all packages of batt/blanket insulations and boardstock insulations, respectively, with a chart showing the R-value, length, width, thickness, and square feet of insulation in the package, and 460.13(c)(1) requires that they include the chart on the manufacturer's fact sheets.

Comments Regarding Batt and Blanket Insulations

NAIMA recommended amending 460.12(b)(1) to apply to all batt and blanket insulation products by deleting the reference to ''mineral fiber.'' NAIMA asserted that batts and blankets made of other materials, such as cotton, other cellulosic materials, and plastic fiber, have been introduced into the marketplace and that the Rule should specify labeling requirements for these new batt and blanket products.[107]

Discussion Regarding Batt and Blanket Insulations

The Commission agrees that all types of batt and blanket insulations should be labeled with the same basic R-value and coverage area information, and that manufactures' fact sheets for these insulation products should include these disclosures. Like other basic coverage chart disclosure requirements in section 460.12(b), the Commission designed this coverage chart disclosure requirement to apply to the form of the product (batt or blanket), not the type (*e.g.*, mineral fiber). The Rule refers to ''mineral fiber'' batts and blankets because when the Rule was promulgated the batt and blanket insulation products being sold in the residential market were mineral fiber insulation products, primarily fiberglass. The Commission, therefore, proposes amending the Rule to clarify the requirement by deleting the phrase ''mineral fiber'' from section 460.12(b)(1), and solicits comments on this proposal.

Comments Regarding Disclosures to Assist Installers and Post-Installation Inspectors

ICAA recommended that the Commission require manufacturers of batt and blanket insulations to mark their products with the R-value in numerical terms only. ICAA contended that the method some manufacturers use of applying stripes on unfaced batt and blanket products to indicate the product's R-value is not understood by installers, code compliance officials, and others in the building inspection community.[108]

To assist building code officials and others who perform post-installation inspections in determining whether the correct R-value has been installed, ICAA also recommended that the Commission require manufacturers of unfaced batt and blanket insulation products to include the following statement on their product packages:

The unfaced batt should be installed so that the R-value identification is visible for inspection. ICAA reported that the 1955 version of the Model Energy Code (''CABO/MEC''), issued by the Council of American Building Officials (''CABO''), recommends that insulation be installed in a manner that will permit inspection of the manufacturer's R-value identification mark. ICAA asserted that that is important that contractors who install unfaced batts and blanket do so in a way that will make it possible to verify R-value quickly and easily.[109]

Discussion Regarding Disclosures To Assist Installers and Post-Installation Inspectors

The R-value Rule does not require that individual pieces of insulation be marked, but instead requires point-of-sale disclosures to consumers prior to purchase on manufacturers' package labels and fact sheets, and on receipts or contracts professional installers and new home sellers must give to consumers. These prepurchase disclosures enable consumers to compare competing insulation products and make purchasing decisions. As ICAA's comment suggests, however, many manufacturers also mark individual insulation products such as faced or unfaced batts and blankets and boardstock products in some way to identify their R-value.

Under provisions of the Energy Policy and Conservation Act of 1992, DOE, the U.S. Department of Housing and Urban Development (''HUD''), and the U.S. Department of Agriculture (''USDA'') have adopted the CABO/MEC for federal residential buildings or federally insured residential housing, and 33 states have adopted, at some level, some version of the CABO/MEC, or its equivalent. The CABO/MEC (including the 1995 version) requires for new residential construction (including new additions to existing residential buildings), that, among other things: (1) An R-value identification mark appear on each piece of insulation that is 12 inches wide or greater; and (2) individual pieces of insulation be installed in attics, floors, and wall cavities in a manner that permits post-installation inspection of the manufacturer's R-value identification mark. These requirements assist building inspectors in determining, after installation, whether the proper amount of insulation has been installed to meet the minimum thermal performance requirements of the CABO/MEC.

Marking individual batt, blanket, and boardstock insulation products with R-values would not provide additional prepurchase information to consumers (beyond the required disclosures on product packages, manufacturers' fact sheets, and in contracts or receipts). It would, however, facilitate R-value verification. But, the CABO/MEC already requires such marking and it has

[107] NAIMA, #24, at 4.

[108] ICAA/1, #17, at 3. ICAA provided an article from *Insulation Contractors Monthly* (Appendix A to the comment) describing guidelines, issued by NAIMA, for identifying, by means of stripes, the R-values of unfaced fiberglass insulation. *See also* NAIMA, #24m at 6–7.

[109] ICAA/1, #17, at 2. *See also* Rock Wool Mfg./1, #06, at 1 (fully supportin ICAA's submittal).

been adopted for new residential construction by other agencies of the federal government and the majority of states. Thus, it does not appear necessary for the Commission to amend the Rule to require that individual batts, blankets, or other insulation products be marked. The Commission solicits comments, however, regarding whether this additional disclosure requirement in the Rule would assist consumers in making purchasing decisions, whether (and why) CABO/MEC requirements are insufficient to provide this information to building inspectors, and whether (and to what extent) there currently are abuses in the sale and installation of home insulation that could be remedied by duplicating the CABO/MEC requirements in the R-value Rule, as well as the costs that such an amendment would impose on manufacturers.

Comments Regarding Disclosure of Thickness

Celotex and PIMA recommended requiring the disclosure, on the required coverage charts on manufacturer's package labels and fact sheets for boardstock insulations, of the ''nominal thickness'' of the boards in the package. The comments asserted that boardstock insulations are produced in nominal (or average) thicknesses and expressed concern that the current wording of the section implies exact thickness.[110]

Discussion Regarding Disclosure of Thickness

Subsections 460.12(b)(1) and 460.12(b)(4) of the Rule require the disclosure of ''thickness'' for batts, blankets, and boardstock products, without defining whether the thickness disclosed must be the actual, minimum, nominal, or average thickness.[111] Although variations in the manufacturing process may make it difficult for manufacturers to ensure that they produce products of exact thickness, it is essential that the thickness delivered to consumers be within a reasonable tolerance because the total R-value of a batt, blanket or boardstock insulation product is directly related to its thickness. In order to provide guidance to sellers, the Commission solicits comments on: (1) Whether it should propose amending the Rule to specify individual tolerances for the required thickness disclosure (as well as required disclosures of net weight and other dimensions of packaged insulation products) and procedures for determining whether products are within those tolerances; (2) what tolerances and procedures it should consider, for example, the procedures and tolerances adopted by the National Conference of Weights and Measures (''NCMW'');[112] and (3) the benefits and burdens to consumers and sellers of specifying individual tolerances and procedures for these measurements.

c. Disclosures for Loose-fill Insulations

Section 460.12(b) of the rule requires that labels on loose-fill insulation packages disclose the minimum net weight of the insulation in the package and include a coverage chart disclosing minimum thickness (after settling), maximum net coverage area, minimum weight per square foot, and (for loose-fill cellulose insulation only) number of bags per 1,000 square feet for each of several specified total R-values for installation in open attics. The Rule currently specifies different total R-values for which the disclosures must be made for loose-fill cellulose insulations and other types of loose-fill insulations. The rule requires professional installers to calculate the number of square feet to be insulated and to install the number of bags indicated on the manufacturer's coverage chart that are necessary for the desired R-value (commonly referred to as ''bag count'').

Comments Regarding Required Disclosures

Four comments recommended that the Commission amend section 460.12(b) to require the same total R-value and other disclosures for all types of loose-fill insulations.[113]

Discussion Regarding Required Disclosures

The Commission agrees that it would be appropriate to require the same disclosures for all types of loose-fill insulations for application in attics or other open areas. The Commission originally prescribed separate disclosure requirements for loose-fill cellulose insulations and other types of loose-fill insulations (primarily material fiber loose-fill insulations) in response to requests that the Rule, where possible, apply labeling requirements consistent with GSA's purchasing specifications. 44 FR at 50230. GSA's specifications at that time required that labels for loose-fill cellulose insulation disclose the number of bags required to cover 1,000 square feet, but did not require this disclosure on labels for loose-fill mineral fiber insulation, and it required that the mandatory disclosures be made at different total R-values for the two types of loose-fill insulations.[114] After the Commission promulgated the Rule, GSA eliminated its own specifications and now uses ASTM material specifications for determining which insulation products may be purchased by the federal government (or in connection with programs operated by the federal government).[115] The Commission believes that there no longer is any justification for requiring different disclosures for different types of loose-fill insulations for application in attics or other open areas, and proposes to apply a single set of disclosures requirements for all types. The Commission solicits comments regarding this proposal, including the total R-values for which it would be most appropriate to require the disclosures, and whether the same disclosures should apply to both dry-applied loose-fill insulations and stabilized insulations.

[110] Celotex, #25, at 5; PIMA, #30, at 7. The Commission understands that, by ''nominal thickness,'' the comments mean the ''average thickness'' of each board.

[111] The Commission, on the other hand, required the disclosure of ''minimum thickness'' for loose-fill insulations in subsections 460.12(b)(2)–(3) to address the issue of settling, which is discussed *supra.*

[112] *See* ''Checking the Net Contents of Packaged Goods,'' NBS/NIST Handbook 133, Third Edition (including Supplements 1, 2, and 3) (Sept. 1998), and ''Checking the Net Contents of Packaged Goods,'' NIST Handbook 133, Third Edition, Supplement 4 (Oct. 1994). The NCWM procedures provide mean and maximum allowable variations for the net contents of packaged items, including weight, dimensions, and other measurements.

[113] Hamilton, #22, at 2 (recommending disclosures at R–13, R–19, R–30, R–38, and R–42, and recommending that the combined subsection require that mineral fiber loose-fill coverage charts list number of bags per 1000 square feet); ICAA/1, #17, at 9 (R–11, R–19, R–30, and R–38); NAIMA, #24, at 5 (recommending disclosures at R–13, R–19, R–30, R–38—these are the common R-values typically installed to satisfy the roof/ceiling requirements of the CABO/MEC and many state energy codes; also recommending disclosures at all other R-values listed on the chart); GreenStone/ Smith, #32, at 3 (recommending disclosures at R–11, R–13, R–19, R–22, R–24, R–30, R–32, R–38, and R–40). *See also* Rock Wool Mfg./1, #06 (fully supporting ICAA's submittal).

[114] Consistent with the GSA specification, subsection 460.12(b)(2) requires that the disclosures be made at R-values of 11, 19, and 22 and all loose-fill insulation except cellulose, and subsection 460.12(b)(3) requires the disclosures at R-values of 13, 19, 24, 32, and 40 for loose-file cellulose insulation.

[115] In its compliance guidelines published in 1980, the Commission's staff explained that GSA had eliminated its own specifications and recommended that manufacturers of mineral fiber and other loose-file insulations other than cellulose include a column disclosing number of bags per 1,000 square feet in their coverage charts. Staff compliance guidelines, 45 FR 68920, at 68923–24 (1980). The Commission believes that virtually all manufacturers of loose-file insulation currently includes this information.

Comments Regarding Disclosure of ''Minimum Net Weight''

One comment recommended requiring the disclosure of ''net weight'' on loose-fill insulation packages, instead of ''minimum net weight.'' [116]

Discussion Regarding Disclosure of ''Minimum Net Weight''

Subsections 460.12(b)(2) and 460.12(b)(3) require that ''minimum net weight'' be disclosed on package labels of all types of loose-fill insulations, but do not require all the disclosure be made in those exact words. Some state weights and measures regulations, on the other hand, require the disclosure of ''net weight'' or ''nominal net weight,'' using specific words. To ensure that manufacturers and other sellers can conform to the requirements of both the Rule and the states' regulations, the Commission's staff had advised home insulation manufacturers that the Rule does not require that the word ''minimum'' appear in the disclosure, and that they can use the terms required by the state regulations. The Commission affirms the staff's advice.

Further, the Commission intended the term ''minimum net weight'' in the Rule to mean that the package contains at least the weight claimed, because the accuracy of the information in the coverage chart depends on the package containing that amount of insulation material. Terms such as ''net weight'' or ''nominal net weight'' in state weights and measures regulations, on the other hand, have been interpreted to mean average weight per package, within a specific tolerance, over a given lot of packages or production runs. As with the thickness of batt, blanket, and boardstock insulations, discussed in Part IV.E.1.b, above variations in the manufacturing process may make it difficult for manufacturers to ensure that they produce loose-fill insulation packages filled with an exact weight of material; but it is essential that sufficient loose-fill insulation material be installed for consumers to received the total R-value they are purchasing. If an insufficient amount of material is contained in the packages used to install insulation in a particular consumer's home, even if the average weight is correct over the sampling lot considered, that consumer will receive less insulation R-value than promised.

The Commission is committed to ensuring that consumers receive what they are promised, while also minimizing unnecessary burdens and costs on sellers. The Commission, therefore, solicits comments on: (1) Whether it should propose amending the Rule to specify individual tolerances for the required net weight disclosure for loose-fill insulation and procedures for determining whether packages are within those tolerances; (2) what tolerances and procedures it should consider, for example, the tolerances and procedures adopted by the NCWN;[117] and (3) the benefits and burdens to consumers and sellers of specifying individual tolerances and procedures for the measurement of net weight.

Comments Regarding Disclosure of ''Minimum Thickness''

Seven comments discussed issues relating to the requirement in subsections 460.12(b)(2)–(3) that labels include a coverage chart disclosing, among other information, the ''minimum thickness'' [118] of loose-fill insulations for application in attics and other open areas.[119] ICAA proposed that the Commission amend the Rule to require that manufacturers of loose-fill cellulose insulations disclose ''minimum initially installed thickness'' in addition to ''minimum thickness.'' ICAA contended that this additional information would assist installers by preventing them from mistakenly initially installing loose fill cellulose insulation only to the ''minimum thickness'' currently shown on the coverage chart (that is, the minimum thickness required to obtain the claimed total R-value after the product has settled). ICAA believes that is a long-standing industry practice that violates the Rule. ICAA asserted that CIMA agrees that this additional information would result in a marked improvement in consumer protection. ICAA contended that manufacturers' failure to provide this information on coverage charts effectively results in the installation of loose-fill insulation at total R-values below what is claimed.[116]

NAIMA supported ICAA's proposal and recommended requiring disclosures on coverage charts of the ''minimum initial installed thickness,'' in addition to ''minimum settled thickness,'' for products that settle enough to reduce the total R-value by more than five percent. NAIMA reported that ICAA has requested that loose-fill cellulose insulation manufacturers include ''initial installed thickness'' disclosures on coverage charts, that several manufacturers currently put this information on their coverage charts, and that ASTM has developed a test method to determine initial installed thickness to support ICAA's initiative.[117] Mr. Smith, for GreenStone, similarly recommended requiring the disclosure of both ''minimum settled thickness' and ''approximate initial installed thickness'' on coverage charts of loose-fill insulations.[118]

Two comments specifically opposed requiring the disclosure of initial installed thickness. Hamilton contended that it is very difficult to arrive at a single thickness that will apply to all installation blowing equipment and installers' application techniques, and suggested that manufacturers should place more emphasis on training and instructions for professional installers instead of emphasizing an initially installed thickness.[119] Clayville commented that the issue of disclosing an initial installed thickness has been raised primarily by ICAA, whose members installed predominantly mineral fiber insulation, and that the proposal appears calculated to take advantage of the lack of a recognized test procedure to determine the settlement of (dry-applied) loose-fill mineral fiber insulations after installation. Clayville contended that requiring the addition of an initial installed thickness column would create even more confusion in the industry and would not benefit consumers.[120]

Tascon stated that the thickness of loose-fill insulation does not accurately determine its total R-value because there are different types of installation equipment and application techniques, including some that deliberately ''fluff'' (dry-applied) loose-fill insulation products; that is, that increase a product's thickness (by applying it with more air at a lower density) at the expense of its density and total R-value. Tascon recommended that the Commission continue to emphasize bag

[116] GreenStone/Smith, #32, at 3.

[117] See note 112, *supra.*

[118] The term ''minimum thickness'' in subsections 460.12(b)(2)–(3) refers to the thickness of installed loose-fill insulation after settling, not to the thickness of a packaged product. The discussion in the text of tolerances and procedures for measuring the thickness of packaged products, therefore, does not apply to the discussion of ''minimum thickness'' in subsections 460.12(b)(2)–(3).

[119] ICAA/1, #17, at 3–4; Hamilton, #22, at 2–3; NAIMA, #24, at 5: GreeneStone/Smith, #32, at 2; Clayville, #34, at 2–3; Tascon, #35, at 2; Rock Wool Mfg./2, #39, at 1–3.

[116] ICAA/1, #17, at 3–4. *See also* Rock Wool Mfg./1, #, #06 (fully supporting ICAA's submittal.)

[117] NAIMA, #24, at 5. NAIMA stated that the ASTM C 16 committee has developed a test method to determine initial installed thickness, and that ASTM C 16.23 has developed a draft standard guide for development of coverage charts for loose-fill insulation that includes the initial installed thickness language NAIMA recommended

[118] GreenStone/Smith #32, at 2–3.

[119] Hamilton, #22, at 2–3.

[120] Clayville, #34, at 2–3.

account to ensure that installers apply the necessary amount of loose-fill insulation in attics to attain the desired total R-value.[121]

As an alternative to disclosing minimum installed thickness for their products, several manufacturers now guarantee that the installer will attain the claimed total R-value (and the weight per square foot and density necessary for that R-value) by initially applying at least a specific ''guaranteed thickness.'' ICAA proposed requiring manufacturers who offer this guarantee to add a ''Guaranteed Thickness'' column to the required coverage charts.[122] Rock Wool Mfg. supported ICAA's proposal as one method of assuring that consumers receive the total R-value claimed for (dry-applied) loose-fill insulations in attics and other open areas.[123] ICAA also proposed adding the following language to section 460.8 to spell out the obligations of manufacturers and installers regarding how the Rule's tolerance provision applies where manufacturers guarantee that the claimed R-value will be obtained when the installer applies at least the ''guaranteed thickness'':

If you are a manufacturer of loose-fill insulation and you guarantee R-value based upon thickness, your ''guaranteed thickness'' must be an installed thickness that will result in at least the minimum weight per square foot indicated on your label.

If you are an installer, you must install at least the minimum thickness and the minimum weight per square foot as indicated on the manufacturer's label. If you install a ''Guaranteed Inches equal R-value'' loose-fill insulation product, you must install at least the minimum thickness for the corresponding R-value as indicated of the manufacturer's label.

Disussion Regarding Disclosure of ''Minimum Thickness''

ICAA has long taken the position that installers have difficulty using bag count (or weight of insulation material installed) as the measure of their compliance with the Rule (and of whether they have installed the required amount of insulation material). ICAA contends that the reason for this problem is that the person applying loose-fill insulation through a blowing hose in the attic has no way of knowing at any given point how many bags have been loaded into the hopper of the blowing machine located in the truck outside. Requiring manufacturers to add a disclosure of ''initial installed thickness'' to coverage charts would give installers an additional tool to help them when they are applying dry-applied loose-fill insulation products. This additional information would not, however, allow installers to comply with the Rule simply by installing the claimed initial installed thickness, without having to count the number of bags they have installed (or otherwise ensure they have applied the required amount of insulation material) that is necessary, along with thickness, to achieve the claimed total R-value. Because dry-applied loose-fill insulation products normally settle after installation, the Rule requires: (1) That each manufacturer determine the R-value of its home insulation product at settled density and construct coverage charts showing the minimum settled thickness, minimum weight per square foot, and coverage area per bag for various total R-values; and (2) that installers measure the area to be covered and install the number of bags (and weight of insulation material) indicated on the insulation product's coverage chart for the total R-value desired. These requirements are necessary because the claimed total R-value for a specific dry-applied loose-fill insulation can be attained only when the requisite amount of insulation material in both thickness and density has been installed.

Further, it does not appear that recognized procedures are currently available that could be used to determine, on a uniform basis, a required initial thickness for all types of dry-applied loose-fill insulations. The settled density test procedure in ASTM C 739–91, which is required for determining the R-value test specimen density for dry-applied cellulose insulation, includes an initial blown step that could serve as the basis for determining an initial installed thickness for cellulose; but ASTM has not adopted a similar test procedure for dry-applied loose-fill mineral fiber insulations. Without reliable procedures to determine initial installed thickness, claims on coverage charts of competing insulations might not be consistent, and could be misleading. Further, because the initial thickness applied may vary with the blowing equipment and application technique used, even for cellulose (where a standardized test procedure is available to use in determining an initial installed thickness), an installer who applied the initial thickness determined under the required settled density test procedure would still have to ensure that he had applied the necessary amount of insulation material.

Requiring (or allowing) manufacturers who claim a ''guaranteed thickness'' for their dry-applied loose-fill insulations to include a ''guaranteed thickness'' column in their coverage charts on labels and fact sheets required by the Rule, as suggested by ICAA and Rock Wool Mfg., raises similar, but even more complicated, issues. Adding this disclosure might provide useful information. Without a uniform, verifiable means of determining an initial thickness that will achieve the claimed total R-value in all applications,[124] however, the Commission does not believe it would be appropriate to require, or allow, manufacturers to add this information to the required manufacturers' coverage charts, or to allow installers to rely on the ''guaranteed thickness'' alone (and not also on bag count) in determining the amount of insulation to apply to achieve the claimed total R-value.

For these reasons, the Commission does not propose amending the Rule to require the disclosure of an ''initial installed thickness'' or of a manufacturer's voluntary ''guaranteed thickness'' at this time. The Commission, however, solicits comments regarding how manufacturers of all types of dry-applied loose-fill insulations and stabilized insulations could determine an initial installed thickness, or a guaranteed thickness, for each total R-value claimed, whether the Commission should require the addition of this information to the required coverage chart for either dry-applied loose-fill insulations or stabilized insulations, and under what circumstances installing the ''initial installed thickness'' or ''guaranteed thickness'' of insulation could be a sufficient basis alone for installers to ensure that they have applied the requisite amount of insulation material.

Comments Regarding the Use of Tabs or Seals on Packages

NAIMA recommended requiring manufacturers to attach to or print on each bag of loose-fill insulation a single, unique tab or seal identifying the product, and that installers clip the tabs from each bag used and attach them to the customer's receipt.[125] Tascon asserted that requiring installers to give the consumer the tabs or labels from

[121] Tascon, #35, at 2.

[122] ICAA/1, #17, at 9.

[123] Rock Wool Mfg./2, #39, at 1–3. *Seel also* Rock Wool Manufacturing's comments concerning bag tabs, below.

[124] From a practical standpoint, providing a ''guaranteed thickness'' may make many insulation products less competitive. Because of variabilities in blowing equipment and application techniques among installers, manufacturers making such a guarantee may have to claim on their coverage chart that a considerably greater thickness (and more insulation material) than normal is necessary to guarantee that if the installer applies the ''guaranteed thickness,'' the claimed total R-value will be achieved under all possible circumstances.

[125] NAIMA, #24, at 5–7.

each bag installed would be an effective way to prevent cheating.[126] Rock Wool Mfg. and ICAA opposed requiring the use of bag tabs.[127]

Discussion Regarding the Use of Tabs or Seals on Packages

The Commission does not believe that sufficient evidence has been presented that requiring the use of bag tabs would add materially to the Rule's existing requirements that installers install the appropriate amount the insulation and disclose, in receipt to customers, the number of bags of loose-fill insulation installed. The Commission, therefore, does not propose amending the Rule to require the use of tabs.

Comments Regarding Advising Consumers How To Verify R-value Installed

ICAA recommended that the Commission amend the Rule to include a statement in fact sheets for loose-fill insulations advising consumers that ICAA can provide them with information about how they can verify the total R-value of loose-fill insulations installed in attics of new homes or added to existing attics.[128]

Discussion Regarding Advising Consumers How To Verify R-value Installed

To the extent that the CABO/MEC already includes requirements and procedures for building inspectors to determine whether the required amount of insulation has been installed in new construction, it may not be necessary or appropriate for the Commission to require additional disclosures in manufacturers' fact sheets or elsewhere. For this reason, the Commission does not propose amending the Rule to require this additional disclosure, although this information may be provided voluntarily in other promotional materials. The Commission solicits comments, however, regarding whether (and in what manner) the proposed disclosure would provide benefits beyond the CABO/MEC requirements and procedures relating to building inspections, and whether (and to what extent) there currently are abuses in the sale and installation of home insulation that could be remedied by requiring this additional disclosure, and the costs of manufacturers that would be imposed by a requirement that they include this disclosure on labels or in fact sheets.

d. Disclosures for Urea-based Foam Insulations

Comments

In the original rulemaking proceeding, the Commission determined that the inherent qualities of urea-formaldehyde (''UF'') foam insulations, which were being installed at that time in wall cavities only by professional installers, would cause the products to lose volume, or ''shrink.'' This shrinkage caused the insulation to pull away from the wall cavity in all three directions after installation, leaving the wall partially uninsulated and resulting in a lower than claimed R-value. Although both the rate and extent of shrinkage depended somewhat on the the quality of the chemicals and the product's on-site formulation and application, even if a UF insulation product was installed perfectly, it would shrink and its R-value would decrease. To address this problem, the Rule requires that manufacturers' disclosure the product's R-value in a manner that accounts for the product's shrinkage, or include a specific disclosure about the effect of shrinkage on R-value. 44 FR at 50220, 50231.

Celotex and PIMA recommended that the Commission revise the statement to refer to ''urea-based form insulation,'' because the reference to ''foam insulation'' implies that all foam-type insulation products (including other types of cellular plastics insulations) shrink after installation, resulting in lower R-values than claimed.[129] PIMA stated that UF insulation is no longer sold, and that this disclosure is unnecessary and may cause consumer confusion about other foam-type insulations.[130]

Discussion

The Commission intended to limit this disclosure to UF insulations. Because it appears that UF foam insulation no longer is being sold, however, instead of clarifying this reference, the Commission proposes amending the Rule to delete this obsolete requirement. The Commission solicits commends on this proposal, especially regarding whether any UF insulation products are still being sold, and whether there are other insulation products currently on the market that may be subject to shrinkage that affects R-value.

2. Disclosures in Advertising and Other Promotional Materials

1. Disclosures Required

Background

Sections 460.18 and 460.19 of the Rule specify disclosure requirements for advertisements and other promotional materials (including those on the Internet) for home insulation products aimed at consumers that are distributed by manufactures, professional installers, or retailers. They require disclosures only if the advertisement or other promotional material includes certain claims about a specific insulation product. The disclosure requirements do not apply to advertisements on television. In general, any advertisement or other promotional material that includes an R-value, thickness, or price must disclose the type of insulation, the product's R-value and the thickness needed to get that R-value, and the following R-value explanatory statement: ''The higher the R-value, the greater the insulating power. Ask your seller for the fact sheet on R-values.[131]

Advertisements and other promotional materials that state a price also must include the coverage area at the stated thickness. Those that state the price per square foot need not disclose the coverage area. If the advertisement or other promotional material compares one type of insulation to another, the comparison must be based on the same coverage area and the R-value of each at a specific thickness must be disclosed. It it includes the price of each insulation, it must include the coverage area for the price and thickness claimed. If it claims only price per square foot, it need not disclose coverage area.

Advertisements, labels, and other promotional materials that contain an energy savings claim for an insulation product (*e.g.*, ''save 25% on heating bills'') must include the following energy savings explanatory statement: ''Savings vary. Find out why in the seller's fact sheet on R-values. Higher R-values mean greater insulating power.'' When both the energy savings explanatory statement and the R-value explanatory statement are triggered by the claims, the seller need only include the energy savings explanatory statement.

Advertisements, labels and other promotional materials that contain a

[126] Tascon, #35, at 2.

[127] ICAA/2, #40, at 1; Rock Wool Mfg./2, t39, at 1–3 (any method of R-value verification dependent on an installer correctly measuring the dimensions of a house and calculating the attic's square footage to be insulated with loose-fill insulation is inherently flawed because even the best installers make errors in measuring and arithmetic, suggested alternatives it considered superior for assuring the accuracy of R-value representations).

[128] ICAA/1, #17, at 9.

[129] Celotex, #25, at 5; PIMA, t30, at 7–8.

[130] PIMA, #30, AT 8 n.4.

[131] All labels and fact sheets must include a version of the R-value explanatory statement, specifically: ''R means resistance to heat flow. The higher the R-value, the greater the insulating power.''

claim that a combination of products including insulation can cut fuel bills or fuel use must also list the products used and state how much of the savings comes from each product, in addition to giving the energy savings explanatory statement. If the advertiser cannot give exact or approximate figures, it must give a ranking of the products.

Discussion

No comment addressed the required disclosures for advertisements and other promotional materials or suggested amending the rule to eliminate any of them. The Commission, however, wants to ensure that the rule does not impose unnecessary burdens on advertising and other promotional materials. When the Commission promulgated the Rule, it considered but rejected a proposal that it limit the required disclosure of the R-value explanatory statement to a specific period of time following the rule's effective date. Because insulation is a very infrequently purchased commodity, the Commission was uncertain that the R-value concept would become widely and permanently understood in a short period of time. The Commission stated it would reexamine in the future the need to continue requiring the R-value explanatory statement in advertisements. 44 FR at 50233. The Commission, therefore, solicits comments on whether it should propose amending the rule to eliminate the requirement that advertisements and other promotional materials that include the triggering claims specified in the Rule include the R-value explanatory statement, or the portion of the savings explanatory statement that explains the meaning of R-value.

In raising this issue for comment, the Commission is not considering eliminating the other disclosures for advertisements and other promotional materials that include an R-value, thickness, price, comparison claim, or energy savings claim. Those required disclosures are necessary to prevent the triggering claims from being unfair or deceptive. Further, the Commission is not considering eliminating the required disclosure of the meaning of R-value from labels or manufacturers' fact sheets. The disclosure on labels and fact sheets is necessary to ensure that consumers have the information they need to understand the R-value information contained on labels, fact sheets, and in advertising and other promotional materials; but the definition on labels and fact sheets that are available to consumers at the point of purchase may make the additional disclosure in advertisements and other promotional materials unnecessary.

Comments should address specifically the current need for the definition of R-value in advertisements and other promotional materials, the current state of consumers' understanding of the term R-value, and whether the availability of the meaning of R-value on labels and manufacturers' fact sheets is sufficient to provide this necessary information to consumers prior to purchase. Commenters are requested to include data such as consumer perception studies that are relevant to these questions.

b. Advertising on Radio

Comments

NAIMA recommended that the Commission exclude radio ads from the Rule's disclosure requirements for advertisements. NAIMA contended that radio advertisements are similar to television advertisements, which the Rule excludes from any disclosure requirements.[132]

Discussion

The Rule originally applied the advertising disclosure requirements, which require disclosures only in advertisements that contain specific triggering claims, to television advertisements as well as all other types of advertising and promotional materials. Unlike other types of advertising, which simply must include the required disclosures ''clearly and conspicuously,'' the Rule as originally promulgated included very specific requirements regarding the manner in which required disclosures would have to be made in television advertising.[133] Four insulation manufacturers appealed the disclosure requirements for television advertising, asserting that the requirements, particularly in light of the manner in which the disclosures would have to be made, were particularly burdensome for short television ads. The Commission settled the appeal by agreeing not to impose disclosure requirements on television ads without conducting further rulemaking proceedings, and rescinded the requirements without conducting further proceedings.[134] No evidence was presented in the original rulemaking or in the appeal concerning any similar burdens that the disclosure requirements would impose on radio ads. Accordingly, the Commission does not propose revising the Rule to exempt radio ads from making these important disclosures, but will accept comments on how the costs of making the required disclosures in radio ads compare to the benefits the disclosures provide to consumers.

3. Disclosures by Installers or New Home Sellers

a. Fact Sheets

Comments

Celotex and PIMA recommended that the Commission require that professional installers (under section 460.15) give a copy of the manufacturer's fact sheet to consumers upon completion of the installation, and that new home sellers (under section 460.16) give a copy of the fact sheet to new home buyers.[135] Celotex and PIMA asserted that these requirements would ensure the dissemination of fact sheets to consumers and promote the purpose of the Rule—that consumers receive accurate and meaningful information.

Discussion

The Commission required fact sheets to provide pre-purchase information to consumers who otherwise probably would not see the information on package labels. Moreover, to minimize the burdens that the Rule imposes on industry members, the Commission required only that installers show the fact sheets to consumers prior to purchase and give them specific disclosures in contracts or receipts about the insulation installed. Similarly, it required new home sellers to disclose in the sales contract, prior to purchase, specific information about the insulation installed (or to be installed) in the new home. The Commission has received no evidence that would justify requiring that installers or new home sellers provide fact sheets, after the purchase, that disclosure R-value information other than for the insulation the consumer has purchased. Accordingly, the Commission does not propose amending the Rule to require that the additional information suggested by the comments be provided.

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[132] NAIMA, #24, at 7.

[133] 44 FR at 5045 Appendix B (1979). For example, TV ads containing triggering claims would have been required to make the disclosures simultaneously in both the audio and video portions of the ad, the video portion of the disclosure would have to have appeared in letters of sufficient size to be easily seen and read on television sets of all sizes, and the disclosures would have been required each time a triggering claim was made. The Rule also would have restricted the video background and other sounds during the audio disclosures. The Rule contains no similar restrictions concerning the manner in which disclosures must be made in radio advertising, as long as they are made clearly and conspicuously.

[134] Final rule, 51 FR 39650 (1986).

[135] Celotex, #25, at 2; PIMA, #30, at 3.

b. Attic Cards and Certificates

Comments

ICAA proposed that the Commission require new home sellers to make disclosures to purchasers in attic cards signed by the new home seller, builder, and/or building inspector. These attic cards would be used only to make disclosures concerning the insulation installed in the attic of the new home, would include the information required on the package label of the insulation, and would be posted adjacent to the attic access or scuttle. ICAA contended that attic cards would provide consumers with pertinent information at no significant cost to industry members, would reduce confusion for building inspectors and homeowners, and would be a constructive tool to help ensure that installers meet specifications. ICAA stated that attic cards have been required by the State of Florida since 1991, by the Bonneville Power Administration, by Georgia Power Company's energy efficiency program, and by several other jurisdictions throughout the country. ICAA also stated that the 1995 CABO/MEC recommends that the installer provide a signed, dated, and posted certification for insulation installed in each element of the building envelope, listing the type of insulation, the manufacturer, and the R-value.[136] NAIMA similarly recommended that the Commission amend the Rule to add language, similar to that in the 1995 CABO/MEC, to require professional installers to provide certification of the insulation installed and to post the certification in a conspicuous place on the job site.[137]

Discussion

Although the Commission's staff in the original rulemaking recommended that the Commission require the use of attic cards to make disclosures to consumers,[138] the Commission determined that such a requirement was not necessary in light of the Rule's requirement that new home sellers and installers give consumers written disclosures in contracts or written receipts. Attic cards are usually posted in the attic near the access opening, for later reference by building code inspectors and future owners of the home (as well as the original purchaser), or by the homeowner who has insulation added to an existing home. The Rule, on the other hand, already requires installers and new home sellers to provide consumers with the same information in contracts that would be disclosed on an attic card or in a certification. If the seller or consumer prefers, the contract or receipt can be posted in the form on an attic card after the seller has given the written disclosures to the consumer.

Further, for insulations installed in attics of new residential construction, the CABO/MEC requires that installers provide a signed and dated certification for the insulation installed in each part of the home, listing the type of insulation, the insulation manufacturer, and the total R-value, and post the certification in a conspicuous place on the job site.[139] These requirements have been adopted for use in federal government programs covering new residential construction and by 33 states, at some level.[140]

For these reasons, the Commission does not propose amending the Rule to require additional certification or the use of attic cards. The Commission solicits comments, however, regarding whether (and in what manner, and to what extent) amending the Rule to require that disclosures be made in certifications or attic cards would provide benefits beyond those currently required by the Rule or the CABO/MEC for consumers or building inspectors, and whether (and to what extent) there currently are abuses in the sale and installation of home insulation that could be remedied by including these additional disclosure requirements in the Rule, and the costs to installers and new home sellers of providing the disclosures in certifications and attic cards.

c. Attic Rulers

Comments

ICAA recommended that the Commission require that new home sellers and professional installers apply attic rulers (or thickness markers) for every 500 square feet of attic space, with a minimum of three rulers, when loose-fill insulation is installed in the attics of new or existing homes. ICAA asserted that, like attic cards, attic rulers have been required by the State of Florida since 1991, and are required under the Georgia Power Company's program to encourage energy efficient homes. ICAA contended that the rulers would assist inspectors and consumers in evaluating settled thickness levels and determining whether consumers received the R-value of loose-fill insulation claimed. According to ICAA, the 1995 CABO/MEC proposes the use of attic rulers, installed at least one for every 300 square feet in the attic, and requires that they be affixed to the attic trusses or joists, be marked with minimum initial thickness and minimum settled thickness, and face the attic access.[141] NAIMA similarly recommended that the Commission amend the Rule to require that blown-in loose-fill and spray-applied attic insulations be installed in a manner that would permit verification that the necessary thickness of insulation was installed; specifically, by requiring that thickness markers or attic rulers labeled in inches be installed at least one for every 300 square feet. NAIMA stated that this requirement is similar to requirements in the 1995 CABO/MEC and to requirements of some states.[142]

Discussion

It is essential that both the required density (and weight per square foot) and thickness of loose-fill insulations and stabilized insulations be installed to attain a specific total R-value. The use of attic rulers could help installers apply a sufficient thickness to achieve a specific total R-value, and to apply it in a level and consistent manner (although they still would have to ensure that they apply the required number of bags and weight of insulation material). The use of attic rulers could be particularly beneficial if manufacturers included a verified initial installed thickness disclosure or a guaranteed thickness disclosure on the bag label coverage chart.[143] Attic rulers also could give consumers a ready means of determining, both initially and over time, whether the required minimum thickness has been installed.

The CABO/MEC already requires, for new residential construction, that installers apply blown loose-fill or sprayed (e.g., stabilized) insulation in atticks with the use of thickness markers labeled in inches, attached to the trusses or joists at least one for every 300 square feet (28 m^2), marked with the minimum initial installed thickness and minimum settled thickness, and installed facing the attic access. Because the CABO/MEC requires the use of attic rulers in new construction, the Commission does not propose amending the Rule to require their use. The Commission solicts comments, however, regarding whether (and in what manner, and to what

[136] ICAA/1, #17, at 7–10, *See also* Rock Wool Mfg./1, #06 (fully supporting ICAA's submittal).

[137] NAIMA, #24, at 6–7.

[138] Staff Report at 237–38.

[139] For blown or sprayed insulation, the installer must also provide the initial installed thickness, the settled thickness, the coverage area, and the number of bags installed.

[140] *See* Part III.E.1.b, *supra.*

[141] ICAA/1, #17, at 4–5, 10. *See also* Rock Wool Mfg./1, #06 (fully supporting ICAA's submittal).

[142] NAIMA, #, at 6–7.

[143] *See* Part III.E.1.c, *supra.*

extent) amending the Rule to require the use of thickness markers would provide benefits beyond those currently required by the CABO/MEC for consumers or building inspectors, whether (and to what extent) there currently are abuses in the sale and installation of home insulation that could be remedied by amending the Rule to require the use of thickness markers, and the costs to installers and new home sellers of installing and using thickness markers.

4. Disclosures by Retailers

Background

Section 460.14 of the Rule requires retailers who sell insulation to do-it-yourself consumers to make the manufacturers' fact sheets for the home insulation they sell available to consumers prior to purchase. The retailer can decide how to do so, as long as consumers are likely to notice the fact sheets. For example, the retailer can put them in displays and let consumers take copies, or can keep them in a binder and have a sign telling consumers where the fact sheets are. The purpose of this requirement is to ensure that consumers have the information they need about home insulation prior to purchase to enable them to make cost-based purchasing decisions. When the Commission promulgated the Rule, bulky insulation packages were not normally available on the retailer's sales floor, so the consumer would not see the disclosures on labels prior to purchase. In addition, the fact sheets contain additional information about energy savings and other factors the consumer should consider when purchasing home insulation. See Part IV.E.1.a, above.

Discussion

No comment addressed the requirement that retailers make the manufacturers' fact sheets available to consumers. In the years since the Commission promulgated the Rule, however, the nature of retail sales of home insulation to do-it-yourself consumers has changed. Today, retailers often sell home insulation directly from warehouse-type sales floors where consumers select the packages of insulation they want. Therefore, the R-value and related information on the packages is available to consumers prior to purchase. In response to questions from retailers, the Commission's staff has advised that retailers need not make separate fact sheets available at the point of purchase if all the required fact sheet disclosures are made on the insulation package and if the insulation packages are available on the sales floor for the consumer to inspect prior to purchase. The Commission affirms the staff's advice, proposes amending the Rule to codify this option, and solicits comments on the proposal.

V. Questions for Comment

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of the proposed amendments to the R-value Rule, or about other issues and questions the Commission raises in the discussion in Part IV, above. The Commission requests that factual data, including consumer perception or survey data, upon which the comments are based be submitted with the comments.

To assist commenters, the Commission provides the following list of proposed amendments. The proposed amendments would: (1) Clarify specific provisions of the Rule (Parts IV.D.3 and IV.E.1.b); (2) require disclosure of the same R-value information for competing types of loose-fill insulation products (Part IV.E.1.c); (3) specify the use of current ASTM or other recognized procedures for preparing R-value test specimens of spray-applied insulations (Part IV.C.2.b) and for conducting R-value tests of multi-sheet reflective insulation products (Part IV.D.5.a.ii); (4) delete specific disclosure requirements for urea formaldehyde insulation, which no longer is sold (Part IV.E.1.d); and (5) excuse retailers from making available to consumers separate manufacturers' fact sheets under certain circumstances (Part IV.E.4).

The Commission also requests comments on whether the Commission should propose amendments to: (1) Cover additional products (*i.e.*, residential pipe and duct insulations, and insulation sold for use in commercial buildings) (Part IV.A); (2) require the disclosure of in-use performance values, as opposed to laboratory tests under static, uniform conditions, or of the performance of building systems (Part IV.B); (3) adopt additional test specimen preparation requirements to account for various factors that affect R-values (Part IV.C); (4) adopt additional or updated testing requirements (Part IV.D); and (5) revise the disclosure requirements for manufacturers' labels and fact sheets, advertisements and other promotional materials, and for professional installers, new home sellers, and retailers (Part IV.E).

In addition to the specific questions regarding each of these issues raised in the cited portions of this notice, the Commission solicits comments on the questions below. The questions are designed to assist the public and should not be construed as a limitation on the issues on which public comments may be submitted.

To maximize the benefits and minimize the costs for consumers and sellers (including specifically small businesses), for each amendment proposed by the Commission, and by comments filed in response to this notice, the Commission in general solicits views and data on the following questions:

(1) What benefits would the proposed requirements confer, and on whom?

(2) What paperwork burdens would the proposed requirements impose, and on whom?

(3) What other costs or burdens would the proposed requirements impose, and on whom?

(4) What regulatory alternatives to the proposed requirements are available that would reduce the burdens of the proposed requirements, while providing the same benefits?

(5) What impact, either positive or negative, would the proposed requirements likely have on the environment?

List of Subjects in 16 CFR Part 460

Advertising, Insulation, Labeling, Reporting and recordkeeping requirements, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

Appendix—List of Comments

Name, Symbol, and Number

AFM Corporation (AFM)—#38
Advanced Foil Systems (AFS)—#02
Matt Anderson (Anderson)—#08
BASF Corporation (BASF)—#21
Benchmark Foam, Inc. (Benchmark)—#04
Big Sky Insulations, Inc. (Big Sky)—#05
The Celotex Corporation (Celotex)—#25
Cellulose Insulation Manufacturers Association (CIMA)—#19
Clayville Insulation (Clayville)—#34
Corbond Corp (Corbond)—#41
Dow Chemical Canada Inc. (Dow)—#37
Energy Control, Inc. (ECI)—#23
England & Associates (England)—#18
EPS Molders Association (EPSMA)—#13
Fi-Foil Co., Inc., by William Lippy (Fi-Foil/Lippy)—#42
Fi-Foil Co., Inc., by Ed Nowman (Fi-Foil/Nowman)—#15
FischerSips Inc. (FischerSips)—#36
GreenStone Industries, by Ivan T. Smith (GreenStone/Smith)—#32
GreenStone Industries, by Joel Tranmer (GreenStone/Tranmer)—#20

Hamilton Mfg., Inc. (Hamilton)—# 22
Insulation Contractors Association of America (ICAA/1)—# 17
Insulation Contractors Association of America (ICAA/2)—# 40
Insulspan, Inc. (Insulspan)—# 33
Rose E. Kettering (Kettering)—# 07
James A. McGarry (McGarry)—# 10
Midwest Roofing Contractors Association (MRCA)—# 31
North American Insulation Manufacturers Association (NAIMA)—# 24
Oak Ridge National Laboratory, by Kenneth E. Wilkes, PhD, PE (ORNL/Wilkes)—# 29
Oak Ridge National Laboratory, by David W. Yarbrough, PhD, PE (ORNL/Yarbrough)—# 28
Polyisocyanurate Insulation Manufacturers Association (PIMA)—# 30
Plymouth Foam Products (Plymouth)—# 01
W.H. Porter, Inc. (Porter)—# 03
Marilyn Raeth (Raeth)—# 09
Regal Industries, Inc. (Regal)—# 16
Rock Wool Manufacturing Co. (Rock Wool Mfg./1)—# 06
Rock Wool Manufacturing Co. (Rock Wool Mfg./2)—# 39
Structural Insulated Panel Association (SIPA)—# 11
Superior Aluminum Insulation Inc. (Superior)—# 27
Tascon, Inc. (Tascon)—# 35
Tierra Consulting Group (Tierra)—# 12
Tennessee Technological University, by David W. Yarbrough, PhD, PE (TN Tech/Yarbrough)—# 26
Western Insulfoam, Division of Premier Industries, Inc. (Western)—# 14

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Wednesday
September 1, 1999

Part IV

DEPARTMENT OF EDUCATION

34 CFR Part 379
Projects With Industry; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 379

Projects With Industry

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education

ACTION: Final Regulations.

SUMMARY: The Secretary amends the regulations governing the Projects With Industry (PWI) program administered by the Rehabilitation Services Administration (RSA). The Rehabilitation Act Amendments of 1998 (1998 Amendments), Title IV of the Workforce Investment Act of 1998 (WIA), made certain amendments to the Rehabilitation Act of 1973 that affect the PWI program. These regulations implement those amendments to the PWI program.

DATES: These regulations are effective October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas E. Finch, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3315, Mary E. Switzer Building, Washington, D.C. 20202–2575. Telephone: (202) 205–8292. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The 1998 Amendments, Pub. L. 105–220, enacted August 7, 1998, makes a number of changes to programs under the Rehabilitation Act of 1973, as amended (Act), intended to increase the employment and employment retention of individuals with disabilities, including streamlined program requirements, enhanced consumer choice, enhanced program accountability, and improved coordination between employment and training programs through statewide and local workforce investment systems.

Statutory amendments to the PWI program change the composition and functions of the Business Advisory Council (BAC), the specific services required to be provided by PWI projects, the eligibility determination process, and data and information collection requirements.

Specifically, the 1998 Amendments require the project's BAC to include a representative of the appropriate designated State unit. In addition, the functions of the BAC pertaining to the identification of job and career availability have been modified to require that the analysis be consistent with the current and projected local employment opportunities identified by the local workforce investment board for the community under section 118(b)(1)(B) of WIA. The 1998 Amendments also now gives the BAC the option to prescribe either training programs or job placement programs in fields related to the job and career availability identified previously. These requirements are implemented in §§ 379.10(a), 379.21(a)(1), and 379.30(b)(1) of the regulations.

With respect to project services, PWI projects now are required to provide job development, in addition to providing job placement and career advancement services. However, the 1998 Amendments now require that training in realistic work settings must be provided only to the extent appropriate. The 1998 Amendments also change the eligibility determination process to allow the recipient of a PWI grant to determine an individual's eligibility for services, to the extent that the determination is made consistent with the requirements of section 102(a) of the Act. These requirements are implemented in §§ 379.3(b), 379.10(b) and (c), 379.21(a)(1) through (3), and 379.30(b)(1) and (6) of these regulations.

The 1998 Amendments also now require that data and information collected for use in conducting the annual review and evaluation of the operation of the project be the same types as described in subparagraphs (A) through (C) of section 101(a)(10) of the Act governing the State Vocational Rehabilitation (VR) Services program, as determined appropriate by the Commissioner. These requirements are implemented in §§ 379.21(a)(6), 379.21(b)(5), and 379.30(b)(6) of these regulations. Specific data and information collection requirements were published for comment in a separate notice published in the **Federal Register** on May 25, 1999 (64 FR 28164).

Finally, we also wish to note that new § 379.4 no longer makes 34 CFR part 369 applicable to the PWI program. The Secretary will be deleting part 369 from the Department's regulations in the near future. Therefore, the Secretary has incorporated into these regulations the following requirements from part 369 that apply to the PWI program:

§ 369.3(a)—The applicability of the Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86 to the PWI program. This requirement is now found in § 379.4(a).

§ 369.4(a)—The following definitions from part 77:
Applicant
Application
Award
Department
EDGAR
Nonprofit
Secretary
These definitions are now found in § 379.5(a).

§ 369.20—Application procedures for this program. This requirement is now found in § 379.22.

§ 369.42(b)—Notification of the availability and purposes of the State's Client Assistance Program. This requirement is now found in § 379.42.

369.46—Special requirements pertaining to the protection, use, and release of personal information. These are now found in § 379.43.

All other requirements in part 369 that were applicable to the PWI program either have been superseded by statutory changes made by the 1998 Amendments, are duplicative of requirements already in part 379, or are not applicable to the PWI program.

Waiver of Notice of Proposed Rulemaking

Section 553(b) of the Administrative Procedure Act (APA) requires the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, these amendments merely incorporate statutory changes into the regulations and do not implement substantive policy. Therefore, pursuant to the exception in section 553(b)(B) of the APA, the Secretary has determined that public comment on the regulations is unnecessary and contrary to the public interest.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These regulations address the National Education Goal that every adult American will possess the knowledge and skills necessary to

compete in a global economy and exercise the rights and responsibilities of citizenship. The regulations further the objectives of this Goal by implementing a program that affords individuals with disabilities opportunities for job training, job placement, placement in competitive employment, and career advancement.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected sections of the regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. The order and regulations do not apply to Indian tribes or tribal organizations.

In accordance with the order, this document provides early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

Based on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

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List of Subjects in 34 CFR part 379

Education, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance Number 84.234 Projects With Industry.)

Dated: August 26, 1999.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

The Secretary amends Title 34 of the Code of Federal Regulations by revising part 379 to read as follows:

PART 379—PROJECTS WITH INDUSTRY

Subpart A—General

Sec.
379.1 What is the Projects With Industry (PWI) program?
379.2 Who is eligible for a grant award under this program?
379.3 Who is eligible for services under this program?
379.4 What regulations apply?
379.5 What definitions apply?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

379.10 What types of project activities are required of each grantee under this program?
379.11 What additional types of project activities may be authorized under this program?

Subpart C—How Does One Apply for an Award?

379.20 How does an eligible entity apply for an award?
379.21 What is the content of an application for an award?
379.22 What are the application procedures for this program?

Subpart D—How Does the Secretary Make a Grant?

379.30 What selection criteria does the Secretary use under this program?
379.31 What other factors does the Secretary consider in reviewing an application?

Subpart E—What Conditions Must Be Met by a Grantee?

379.40 What are the matching requirements?
379.41 What are allowable costs?
379.42 What are the special requirements pertaining to the Client Assistance Program?
379.43 What are the special requirements pertaining to the protection, use, and release of personal information?
379.44 What are the requirements for a continuation award?
379.45 What are the additional reporting requirements?

Subpart F—What Compliance Indicator Requirements Must a Grantee Meet To Receive Continuation Funding?

379.50 What are the requirements for continuation funding?
379.51 What are the program compliance indicators?
379.52 How is grantee performance measured using the compliance indicators?
379.53 What are the weights, minimum performance levels, and performance ranges for each compliance indicator?
379.54 What are the reporting requirements for the compliance indicators?

Appendix A to Part 379—Evaluation Standards

Appendix B to Part 379—Presumption of Eligibility

Appendix C to Part 379—Calculating Required Matching Amount

Authority: 29 U.S.C. 711(c) and 795, unless otherwise noted.

Subpart A—General

§ 379.1 What is the Projects With Industry (PWI) program?

The purpose of this program is to

(a) Create and expand job and career opportunities for individuals with disabilities in the competitive labor market by engaging the talent and leadership of private industry as partners in the rehabilitation process;

(b) Identify competitive job and career opportunities and the skills needed to perform these jobs;

(c) Create practical settings for job readiness and job training programs; and

(d) Provide job placements and career advancement.

(Authority: 29 U.S.C. 795(a)(1))

§ 379.2 Who is eligible for a grant award under this program?

(a) The Secretary may, in consultation with the Secretary of Labor and with the appropriate designated State unit or units, make a grant under this program to any—

(1) Community rehabilitation program provider;

(2) Designated State unit (DSU);

(3) Employer;

(4) Indian tribe or tribal organization;

(5) Labor union;

(6) Nonprofit agency or organization;

(7) Trade association; or

(8) Other agency or organization with the capacity to create and expand job and career opportunities for individuals with disabilities.

(b) The Secretary may make new awards only to those eligible entities identified in paragraph (a) of this section that propose to serve individuals with disabilities in States, portions of States, Indian tribes, or tribal organizations that are currently unserved or underserved by the PWI program.

(Authority: 29 U.S.C. 795(a)(2) and 795(e)(2))

§ 379.3 Who is eligible for services under this program?

(a) An individual is eligible for services under this program if—

(1) The individual is an individual with a disability or an individual with a significant disability;

(2) The individual requires vocational services to prepare for, secure, retain, or regain employment; and

(3) The determination of eligibility is consistent with section 102(a) of the Rehabilitation Act of 1973, as amended (Act), 29 U.S.C. 701–796l.

(b) The recipient of the grant under which the services are provided may determine an individual's eligibility for services under this program, to the extent that the determination is appropriate and consistent with the requirements of section 102(a) of the Act. See Appendix B to this part for further information.

(c) Except as provided in paragraph (d) of this section, an individual who has a disability or is blind, as determined pursuant to title II or title XVI of the Social Security Act (42 U.S.C. 401–433 and 1381–1385)—

(1) Is considered to be an individual with a significant disability; and

(2) Is presumed to be eligible for vocational rehabilitation (VR) services under this program (provided that the individual intends to achieve an employment outcome consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual).

(d) The DSU or recipient of the grant involved may deny an individual services if the DSU or recipient of the grant involved can demonstrate, by clear and convincing evidence, that the individual is incapable of benefiting in terms of an employment outcome from VR services due to the significance of the disability of the individual.

(Authority: 29 U.S.C. 722(a)(3) and 795(a)(3))

§ 379.4 What regulations apply?

The following regulations apply to the Projects With Industry program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 86 (Drug and Alcohol Abuse Prevention).

(b) The regulations in this part 379.

(Authority: 29 U.S.C. 711(c) and 795)

§ 379.5 What definitions apply?

(a) The following terms used in this part are defined in 34 CFR part 361:

Act
Community rehabilitation program
Designated State unit
Individual who is blind
Individual with a disability
Individual with a significant disability
Physical or mental impairment
Substantial impediment to employment

(b) The following definitions also apply to this part:

(1) *Career advancement services* mean services that develop specific job skills beyond those required by the position currently held by an individual with a disability to assist the individual to compete for a promotion or achieve an advanced position.

(2) *Competitive employment,* as the placement outcome under this program, means work—

(i) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and

(ii) For which an individual is compensated at or above the minimum wage, but not less than the customary or usual wage and terms and benefits provided by the employer for the same or similar work performed by individuals who are not disabled.

(3) *Integrated setting,* as part of the definition of ''competitive employment,'' means a setting typically found in the community in which individuals with disabilities interact with non-disabled individuals, other than non-disabled individuals who are providing services to them, to the same extent that non-disabled individuals in comparable positions interact with other persons.

(4) *Job readiness training,* as used in § 379.41(a), means—

(i) Training in job-seeking skills;

(ii) Training in the preparation of resumes or job applications;

(iii) Training in interviewing skills;

(iv) Participating in a job club; or

(v) Other related activities that may assist an individual to secure competitive employment.

(5) *Job training,* as used in this part, means one or more of the following training activities provided prior to placement, as that term is defined in § 379.5(b)(7):

(i) Occupational skills training.

(ii) On-the-job training.

(iii) Workplace training combined with related instruction.

(iv) Job skill upgrading and retraining.

(v) Training to enhance basic work skills and workplace competencies.

(vi) On-site job coaching.

(6) *Person served* means an individual for whom services by a PWI project have been initiated with the objective that those services will result in a placement in competitive employment.

(7) *Placement* means the attainment of competitive employment by a person who has received services from a PWI project and has maintained employment for a period of at least 90 days.

(Authority: 29 U.S.C. 711(c) and 795)

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 379.10 What types of project activities are required of each grantee under this program?

Each grantee under the PWI program must—

(a) Provide for the establishment of a Business Advisory Council (BAC), comprised of representatives of private industry, business concerns, organized labor, individuals with disabilities and their representatives, and a representative of the appropriate DSU, that will—

(1) Identify job and career availability within the community, consistent with the current and projected local employment opportunities identified by the local workforce investment board for the community under section 118(b)(1)(B) of the Workforce Investment Act of 1998;

(2) Identify the skills necessary to perform those jobs and careers; and

(3) Prescribe for individuals with disabilities in fields related to the job and career availability identified in § 379.10(a)(1) either—

(i) training programs designed to develop appropriate job and career skills; or

(ii) job placement programs designed to identify and develop job placement and career advancement opportunities;

(b) Provide job development, job placement, and career advancement services;

(c) To the extent appropriate, arrange for the provision of, or provide for—

(1) Training in realistic work settings to prepare individuals with disabilities for employment and career advancement in the competitive labor market; and

(2) To the extent practicable, the modification of any facilities or equipment of the employer involved that are to be used by individuals with disabilities under this program. However, a project may not be required to provide for this modification if the modification is required as a reasonable accommodation under the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101–12213; and

(d) Provide individuals with disabilities with supportive services that are necessary to permit them to maintain the employment and career advancement for which they have received training under this program.

(Authority: 29 U.S.C. 795)

379.11 What additional types of project activities may be authorized under this program?

The Secretary may include, as part of agreements with grant recipients under this program, authority for the grant recipients to provide technical assistance to—

(a) Assist employers in hiring individuals with disabilities; or

(b) Improve or develop relationships between grant recipients or prospective grant recipients and employers or organized labor; or

(c) Assist employers in understanding and meeting the requirements of the ADA, as that Act relates to employment of individuals with disabilities.

(Authority: 29 U.S.C. 795)

Subpart C—How Does One Apply for an Award?

§ 379.20 How does an eligible entity apply for an award?

To apply for a grant, an eligible entity must submit an application to the Secretary in response to an application notice published in the **Federal Register**.

(Approved by the Office of Management and Budget under control number 1820–0566)

(Authority: 29 U.S.C. 795(e)(1)(B))

§ 379.21 What is the content of an application for an award?

(a) The grant application must include a description of—

(1) The responsibilities and membership of the BAC, consistent with section 611(a)(2)(A) of the Act, and how it will interact with the project in carrying out grant activities, including how the BAC will—

(i) Identify job and career availability within the community, consistent with the current and projected local employment opportunities identified by the local workforce investment board for the community under section 118(b)(1)(B) of the Workforce Investment Act of 1998;

(ii) Identify the skills necessary to perform the jobs and careers identified; and

(iii) For individuals with disabilities in fields related to the job and career availability identified under paragraph (i) of this section, prescribe either—

(A) Training programs designed to develop appropriate job and career skills; or

(B) Job placement programs designed to identify and develop job placement and career advancement opportunities;

(2) How the project will provide job development, job placement, and career advancement services to project participants;

(3) To the extent appropriate, how the project will provide for—

(i) Training in realistic work settings to prepare individuals with disabilities for employment and career advancement in the competitive market; and

(ii) To the extent practicable, the modification of any facilities or equipment of the employer involved that are used primarily by individuals with disabilities, except that a project will not be required to provide for the modification if the modification is required as a reasonable accommodation under the ADA;

(4) How the project will provide individuals with disabilities with the support services that may be required to maintain the employment and career advancement for which the individuals have received training under this part;

(5) How the project will involve private industry in the design of the proposed project and the manner in which the project will collaborate with private industry in planning, implementing, and evaluating job development, job placement, career advancement activities and, to the extent included as part of the activities to be carried out by the project, job training activities;

(6) A plan to conduct annually a review and evaluation of the operation of the proposed project in accordance with the program compliance indicators and standards established in Subpart F of this part and, in conducting the review and evaluation, to collect data and information of the type described in subparagraphs (A) through (C) of section 101(a)(10) of the Act, as determined to be appropriate by the Secretary;

(7) The geographic area to be served by the project, including an explanation of how the area is currently unserved or underserved by the PWI program; and

(8) How the project will address the needs of individuals with disabilities from minority backgrounds, as required by section 21(c) of the Act.

(b) The grant application also must include assurances from the applicant that—

(1) The project will carry out all activities required in § 379.10;

(2) Individuals with disabilities who are placed by the project will receive compensation at or above the minimum wage, but not less than the customary or usual wage paid by the employer for the same or similar work performed by individuals who are not disabled;

(3) Individuals with disabilities who are placed by the project will—

(i) Be given terms and benefits of employment equal to terms and benefits that are given to similarly situated nondisabled co-workers; and

(ii) Not be segregated from their co-workers;

(4) The project will maintain any records required by the Secretary and make those records available for monitoring and audit purposes;

(5) The project will provide to the Secretary an annual evaluation report of project operations as required in § 379.21(a)(6) and will submit reports in the form and detail and at the time required by the Secretary; and

(6) The applicant will comply with any requirements necessary to ensure the correctness and verification of those reports.

(Approved by the Office of Management and Budget under control number 1820–0566)

(Authority: 29 U.S.C. 718(c), 795(a), 795(b), and 795(e)(1)(B))

§ 379.22 What are the application procedures for this program?

The Secretary gives the appropriate DSU an opportunity to review and comment on applications submitted from within the State that it serves. The procedures to be followed by the

applicant and the State are described in §§ 75.155 through 75.159 of EDGAR.

(Authority: 20 U.S.C. 711(c))

Subpart D—How Does the Secretary Make a Grant?

§ 379.30 What selection criteria does the Secretary use under this program?

(a) The Secretary uses the procedures in 34 CFR part 75 to select applications and award new grants.

(b) The Secretary uses the following selection criteria to evaluate an application:

(1) *Extent of need for project* (20 points). The Secretary reviews each application to determine the extent to which the project meets demonstrated needs. The Secretary looks for evidence that—

(i) The applicant has demonstrated a demand in the competitive labor market of the geographic area to be served for the types of jobs for which project participants will be placed and, if appropriate, trained.

(A) The applicant may demonstrate the demand for those jobs by describing an existing current labor market analysis, other needs assessment, or one that it has performed in collaboration with private industry.

(B) The labor market analysis or needs assessment must be consistent with the current and projected local employment opportunities identified by the local workforce investment board for the community under section 118(b)(1)(B) of the Workforce Investment Act of 1998; and

(ii) The job placement and, if appropriate, job training to be provided meets the identified needs for personnel in specific occupations or occupational categories in the geographic area to be served.

(2) *Partnership with industry* (25 points). The Secretary looks for information that demonstrates—

(i) The extent of the project's proposed collaboration with private industry in the planning, implementation, and evaluation of job development, job placement, career advancement activities, and, to the extent included as part of the activities to be carried out by the project, job training activities; and

(ii) The extent of proposed participation of the BAC in—

(A) The identification of job and career opportunities within the community, consistent with the current and projected local employment opportunities identified by the local workforce investment board for the community under section 118(b)(1)(B) of the Workforce Investment Act of 1998;

(B) The identification of the skills necessary to perform the jobs and careers identified; and

(C) For individuals with disabilities in fields related to the job and career availability identified under paragraph (b)(1)(i) of this section, prescribing either—

(1) Training programs designed to develop appropriate job and career skills; or

(2) Job placement programs designed to identify and develop job placement and career advancement opportunities.

(3) *Project design and plan of operation for achieving competitive employment* (25 points). The Secretary reviews each application to determine—

(i) The extent to which the project goals and objectives for achieving competitive employment for individuals with disabilities to be served by the project are clearly stated and meet the needs identified by the applicant and the purposes of the program;

(ii) The extent to which the project provides for all services and activities required under § 379.10;

(iii) The feasibility of proposed strategies and methods for achieving project goals and objectives for competitive employment for project participants;

(iv) The extent to which project activities will be coordinated with the DSU and with other appropriate community resources to ensure an adequate number of referrals and a maximum use of comparable benefits and services;

(v) The extent to which the applicant's management plan will ensure proper and efficient administration of the project; and

(vi) Whether the applicant has proposed a realistic timeline for the implementation of project activities to ensure timely accomplishment of proposed goals and objectives to achieve competitive employment for individuals with disabilities to be served by the project.

(4) *Adequacy of resources and quality of key personnel* (10 points). The Secretary reviews each application to determine—

(i) The adequacy of the resources (including facilities, equipment, and supplies) that the applicant plans to devote to the project;

(ii) The quality of key personnel who will be involved in the project, including—

(A) The qualifications of the project director;

(B) The qualifications of each of the other key personnel to be used in the project; and

(C) The experience and training of key personnel in fields related to the objectives and activities of the project; and

(D) The way the applicant plans to use its resources and personnel to achieve the project's goals and objectives, including the time that key personnel will commit to the project.

(5) *Budget and cost effectiveness* (10 points). The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Project evaluation* (10 points). The Secretary reviews each application to determine the quality of the proposed evaluation plan with respect to—

(i) Evaluating project operations and outcomes;

(ii) Involving the BAC in evaluating the project's job development, job placement, career advancement activities, and, to the extent included as part of the activities to be carried out by the project, job training activities;

(iii) Meeting the annual evaluation reporting requirements in § 379.21(a)(6);

(iv) Determining compliance with the indicators; and

(v) Addressing any deficiencies identified through project evaluation.

(Approved by the Office of Management and Budget under control number 1820–0566)

(Authority: 29 U.S.C. 711(c) and 795)

§ 379.31 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria in § 379.30, the Secretary, in making awards under this program, considers—

(a) The equitable distribution of projects among the States; and

(b) The past performance of the applicant in carrying out a similar PWI project under previously awarded grants, as indicated by factors such as compliance with grant conditions, soundness of programmatic and financial management practices, and meeting the requirements of Subpart F of this part.

(Authority: 29 U.S.C. 795(e)(2) and 795(f)(4))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 379.40 What are the matching requirements?

The Federal share may not be more than 80 percent of the total cost of a project under this program. For assistance in calculating the required matching amount, see Appendix C to this part.

(Authority: 29 U.S.C. 795(c))

§ 379.41 What are allowable costs?

In addition to those costs that are allowable in accordance with 34 CFR 74.27 and 34 CFR 80.22, the following items are allowable costs under this program:

(a) The costs of job readiness training, as defined in § 379.5(b)(5); job training, as defined in § 379.5(b)(6); job placement services; job development and modification; and related support services.

(b) Instruction and supervision of trainees.

(c) Training materials and supplies, including consumable materials.

(d) Instructional aids.

(e) The purchase or modification of rehabilitation technology to meet the needs of individuals with disabilities.

(f) Alteration and renovation appropriate and necessary to ensure access to and use of buildings by individuals with disabilities served by the project.

(g) To the extent practicable, the modification of any facilities or equipment of the employer involved that are to be used by individuals with disabilities under this program. However, a project may not be required to provide for that modification if the modification is required as a reasonable accommodation under the ADA.

(Authority: 29 U.S.C. 711(c) and 795)

§ 379.42 What are the special requirements pertaining to the Client Assistance Program?

Each grantee under a program covered by this part must advise applicants for or recipients of services under its project, or as appropriate, the parents, family members, guardians, advocates, or authorized representatives of those individuals, of the availability and purposes of the State's Client Assistance Program, including information on seeking assistance from that program.

(Authority: 29 U.S.C. 718a)

§ 379.43 What are the special requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any project under this part, including lists of names, addresses, photographs, and records of evaluation, must be held confidential.

(b) The use of information and records concerning individuals must be limited only to purposes directly connected with the project, including project evaluation activities.

(c) This information may not be disclosed, directly or indirectly, other than in the administration of the project, unless the consent of the agency providing the information and the individual to whom the information applies, or his or her representative, have been obtained in writing.

(d) The Secretary or other Federal or State officials responsible for enforcing legal requirements have access to this information without the written consent of the individual.

(e) The final product of the project may not reveal any personally identifying information without the written consent of the individual or his or her representative.

(Authority: 29 U.S.C. 711(c))

§ 379.44 What are the requirements for a continuation award?

(a) A grantee that wants to receive a continuation award must—

(1) Comply with the provisions of 34 CFR 75.253(a), including making substantial progress toward meeting the objectives in its approved application and submitting all performance and financial reports required by 34 CFR 75.118; and

(2) Submit data in accordance with § 379.54 showing that it has met the program compliance indicators established in Subpart F of this part.

(b) In addition to the requirements in paragraph (a) of this section, the following other conditions in 34 CFR 75.253(a) must be met before the Secretary makes a continuation award:

(1) Congress must appropriate sufficient funds under the program.

(2) Continuation of the project must be in the best interest of the Federal Government.

(Approved by the Office of Management and Budget under control number 1820–0566)

(Authority: 29 U.S.C. 711(c) and 795(f)(4))

§ 379.45 What are the additional reporting requirements?

Each grantee must submit the data from its annual evaluation of project operations required under § 379.21(a)(5) no later than 60 days after the end of each project year, unless the Secretary authorizes a later submission date.

(Approved by the Office of Management and Budget under control number 1820–0566)

(Authority: 29 U.S.C. 711(c) and 795)

Subpart F—What Compliance Indicator Requirements Must a Grantee Meet to Receive Continuation Funding?

§ 379.50 What are the requirements for continuation funding?

To receive a continuation award for the third or any subsequent year of a PWI grant, a grantee must adhere to the provisions of its approved application and must receive a minimum composite score of at least 70 points on the program compliance indicators contained in § 379.53.

(Authority: 29 U.S.C. 795(f)(4))

§ 379.51 What are the program compliance indicators?

The program compliance indicators implement program evaluation standards, which are contained in an appendix to this part, by establishing minimum performance levels and performance ranges in essential project areas to measure the effectiveness of individual grantees.

(Authority: 29 U.S.C. 795(d)(1) and 795(f)(1))

§ 379.52 How is grantee performance measured using the compliance indicators?

(a) Each compliance indicator establishes a minimum performance level.

(b) Each compliance indicator also establishes three performance ranges with points assigned to each range. The higher the performance range, the greater the number of points assigned to that range.

(c) If a grantee does not achieve the minimum performance level for a compliance indicator, the grantee receives no points.

(d) If a grantee achieves or exceeds the minimum performance level, the grantee receives the points assigned to the particular performance range that corresponds to its actual level of performance.

(e) The maximum possible composite score that a grantee can receive is 150 points.

(f) A grantee must receive a composite score of at least 70 points to meet the evaluation standards and qualify for continuation funding.

(Authority: 29 U.S.C. 795(f)(1))

§ 379.53 What are the weights, minimum performance levels, and performance ranges for each compliance indicator?

(a) *Percent of individuals served whose disabilities are significant.* (3–10 points) A minimum of 50 percent of individuals served by the project are individuals who have significant disabilities. The performance ranges and the points assigned to each range are as follows:

(1) 50 percent to 59 percent—3 points.

(2) 60 percent to 75 percent—7 points.

(3) 76 percent or more—10 points.

(b) *Percent of individuals served who have been unemployed for at least six months at the time of project entry.* (5–15 points) A minimum of 50 percent of individuals served by the project have been unemployed for at least 6 months at the time of project entry. The

performance ranges and the points assigned to each range are as follows:

(1) 50 percent to 59 percent—5 points.

(2) 60 percent to 75 percent—10 points.

(3) 76 percent or more—15 points.

(c) *Cost per placement.* (8–25 points) The average cost per placement of individuals served by the project does not exceed $1600.00. The performance ranges and the points assigned to each range are as follows:

(1) $1351 to $1600—8 points.

(2) $1000 to $1350—17 points.

(3) Less than $1000–25 points.

(d) *Projected cost per placement.* (5–15 points) The actual average cost per placement of individuals served by the project does not exceed 140 percent of the projected average cost per placement in the grantee's application. The performance ranges and the points assigned to each range are as follows:

(1) 126 percent to 140 percent—5 points.

(2) 111 percent to 125 percent—10 points.

(3) 110 percent or less—15 points.

(e) *Placement rate.* (8–25 points) A minimum of 40 percent of individuals served by the project are placed in competitive employment. The performance ranges and the points assigned to each range are as follows:

(1) 40 percent to 49 percent—8 points.

(2) 50 percent to 69 percent—17 points.

(3) 70 percent or more—25 points.

(f) *Projected placement rate.* (5–15 points) The actual number of individuals served by the project that are placed into competitive employment is at least 50 percent of the number of individuals that the grantee projected in its grant application would be placed. The performance ranges and the points assigned to each range are as follows:

(1) 50 percent to 74 percent—5 points.

(2) 75 percent to 94 percent—10 points.

(3) 95 percent or more—15 points.

(g) *Change in earnings.* (7–20 points) The earnings of individuals served by the project who are placed into competitive employment have increased by an average of at least $75.00 a week over earnings at project entry. The performance ranges and the points assigned to each range are as follows:

(1) $75 to $124—7 points.

(2) $125 to $199—14 points.

(3) $200 or more—20 points.

(h) *Percent placed who have significant disabilities.* (3–10 points) At least 50 percent of individuals served by the project who are placed into competitive employment are individuals who have significant disabilities. The performance ranges and the points assigned to each range are as follows:

(1) 50 percent to 59 percent—3 points.

(2) 60 percent to 75 percent—7 points.

(3) 76 percent or more—10 points.

(i) *Percent unemployed placed.* (5–15 points) At least 50 percent of individuals served by the project who are placed into competitive employment are individuals who were unemployed for at least 6 months at the time of project entry. The performance ranges and the points assigned to each range are as follows:

(1) 50 percent to 59 percent—5 points.

(2) 60 percent to 75 percent—10 points.

(3) 76 percent or more—15 points.

(j) *Summary chart of weights and performance ranges.* The following composite chart shows the weights assigned to the performance ranges for each compliance indicator.

	Performance ranges:		
	Range	Range	Range
Indicator:	1	2	3
Individuals with significant disabilities served	3	7	10
Unemployed served	5	10	15
Cost per placement	8	17	25
Projected cost per placement	5	10	15
Placement rate	8	17	25
Projected placement rate	5	10	15
Change in earnings	7	14	20
Percent placed who have significant disabilities	3	7	10
Percent unemployed placed	5	10	15
Total possible score	49	102	150

(Authority: 29 U.S.C. 795(f)(1))

§ 379.54 What are the reporting requirements for the compliance indicators?

(a) To allow the Secretary to determine whether a grantee is eligible to receive continuation funding for the third year of funding (or the second continuation award) or any subsequent year of a PWI grant, each grantee must submit data to the Secretary for the first project year or for the most recent complete project year no later than 60 days after the end of that project year, unless—

(1) The Secretary authorizes a later submission date; or

(2) The grantee exercises the option in paragraph (c) of this section.

(b) The Secretary uses the data provided pursuant to paragraph (a) of this section to determine if the grantee has met the program compliance indicators established in this Subpart F.

(c) If the data provided under paragraph (a) of this section for the most recent complete project year shows that a grantee has failed to achieve the minimum composite score required to meet the program compliance indicators (see § 379.52(f)), the grantee may, at its option, submit data from the first six months of the current project year. The data must demonstrate that the grantee's project performance has improved sufficiently to meet the minimum composite score.

(d) The grantee must submit data submitted pursuant to paragraph (c) of this section no later than 60 days after the end of that 6 month period, unless the Secretary authorizes a later submission date.

(Approved by the Office of Management and Budget under control number 1820–0566)
(Authority: 29 U.S.C. 795(f)(2) and 795(f)(4))

Appendix A To Part 379—Evaluation Standards

Standard 1: The primary objective of the project must be to assist individuals with disabilities to obtain competitive employment. The activities carried out by the project must support the accomplishment of this objective.

Standard 2: The project must serve individuals with disabilities that impair their capacity to obtain competitive employment. In selecting persons to receive services,

priority must be given to individuals with significant disabilities.

Standard 3: The project must ensure the provision of services that will assist in the placement of individuals with disabilities.

Standard 4: Funds must be used to achieve the project's primary objective at minimum cost to the Federal Government.

Standard 5: The project's advisory council must provide policy guidance and assistance in the conduct of the project.

Standard 6: Working relationships, including partnerships, must be established with agencies and organizations to expand the project's capacity to meet its objectives.

Standard 7: The project must obtain positive results in assisting individuals with disabilities to obtain competitive employment.

Appendix B To Part 379—Presumption of Eligibility

If a DSU determines that an individual is an eligible individual under section 102(a) of the Act, including that the individual meets the definition of an ''individual with a significant disability,'' and refers the individual to a PWI project, the PWI grantee may initiate services to that individual without the need for an additional determination of eligibility. In these instances, the PWI grantee should obtain appropriate documentation of this determination from the DSU.

Appendix C To Part 379—Calculating Required Matching Amount

1. The method for calculating the required matching amount may be stated by the following formula:

$X = (Y \div .8) - Y$

X = Required Match (provided in cash or through third party in-kind contributions)

Y = Amount of Federal Funds

This equation holds true regardless of the total cost of the project. The amount of Federal funds spent in a fiscal year (FY) can never be more than 80 percent (hence, the ''.8'' in the formula) of the total funds (Federal and non-Federal) spent by the project. Thus, the formula is not dependent on knowing the total cost of the project. One needs to know only that the Federal share can be no more than 80 percent of whatever the total costs may turn out to be. In all cases, the matching contribution is calculated by dividing the amount of the Federal grant award by 80 percent (.8) and subtracting from that result the amount of the Federal grant award.

For example: If the amount of the Federal PWI grant award is $400,000, the amount of the required match is $100,000, calculated as follows:

Required match	=	(Am't. of Fed. Funds in FY	÷	Max. Fed. % of Total)	–	(Am't. of Fed. Funds in FY)
X	=	($400,000	÷	.8)	–	400,000
X	=	$500,000–400,000.				
X	=	$100,000.				

The matching contribution is never simply 20 percent of the amount of the Federal grant award (i.e., in the above example, NOT .2 x $400,000).

2. Another consideration is what happens if a grantee carries over unspent Federal funds it received in a fiscal year. If the grantee spends or obligates less than the amount of its Federal grant award in a particular fiscal year and carries over the unspent or unobligated amount of its Federal grant award, its required matching contribution stays the same because the amount of its required matching expenditures or obligations is based on the amount of Federal dollars received in a particular fiscal year. That is, if the grantee carries over any unspent or unobligated Federal funds, the grantee must have spent or obligated the amount of non-Federal funds required for its matching contribution in the same fiscal year in which the Federal funds were received.

For example: If a PWI grantee receives a grant award of $80,000 in FY 2000, its matching requirement for these funds is $20,000. If the grantee spends and obligates only $64,000 in FY 2000, it may ''carry over'' $16,000 to FY 2001. However, the grantee must spend or obligate $20,000 in non-Federal funds in FY 2000 to meet its matching requirements for the $80,000 it received in FY 2000, even though it does not spend or obligate the entire $80,000 in FY 2000. If the grantee fails to spend or obligate in FY 2000 the entire $20,000 in non-Federal funds, the grantee will fail to meet the matching requirement for the $80,000 it received in FY 2000 and may not carry over the unspent or unobligated $16,000 to FY 2001.

3. The matching contribution also must comply with the requirements of 34 CFR 74.23 (for grantees that are institutions of higher education, hospitals, or other nonprofit organizations) or 34 CFR 80.24 (for grantees that are State, local, or Indian tribal governments). The term ''third party in-kind contributions'' is defined in either 34 CFR 74.2 or 34 CFR 80.3, as applicable to the type of grantee.

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Federal Register

Wednesday
September 1, 1999

Part V

Department of the Treasury

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Bank Enterprise Award Program; Notice

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Bank Enterprise Award Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of Funds Availability (NOFA) inviting applications.

SUMMARY: The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*) authorizes the Community Development Financial Institutions Fund (hereafter referred to as ''the Fund'') to provide incentives to insured depository institutions for the purposes of promoting investments in or other support to Community Development Financial Institutions (''CDFIs'') and facilitating increased lending and provision of financial and other services in economically distressed communities. Insured depository institutions and CDFIs are defined terms in 12 CFR part 1806, which governs the Bank Enterprise Award (''BEA'') Program. The Fund intends to award funds under this NOFA up to the maximum amount authorized by law. As of the date of this NOFA, the Fund intends to make available up to $25 million in BEA Program funds, subject to the availability of appropriated funds. The Fund may award in excess of $25 million if it deems it appropriate, subject to the availability of appropriated funds.

In connection with this NOFA, the Fund is conducting information sessions to disseminate information to organizations contemplating applying to, and other organizations interested in learning about, the BEA Program. The schedule for the information sessions is as follows:

Monday, September 13, 1999 (New York, New York);
Thursday, September 16, 1999 (Boston, Massachusetts);
Friday, September 17, 1999 (Miami, Florida and Minneapolis, Minnesota);
Tuesday, September 21, 1999 (New Orleans, Louisiana);
Wednesday, September 22, 1999 (Billings, Montana and Kansas City, Missouri);
Thursday, September 23, 1999 (San Antonio, Texas);
Friday, September 24, 1999 (Chicago, Illinois; San Diego, California, and Seattle, Washington);
Monday, September 27, 1999 (Albuquerque, New Mexico; Pittsburgh, Pennsylvania; San Francisco, California); and
Tuesday, September 28, 1999 (Denver, Colorado and Nashville, Tennessee).

For more information, or to register for an information session, call the Fund at (202) 622–8662.

DATES: Applications may be submitted at any time after September 1, 1999. The deadline for receipt of an application is 6 p.m. Eastern Standard Time on Tuesday, November 23, 1999. Applications received in the offices of the Fund after that date and time will not be accepted and will be returned to the sender. Any entity seeking certification as a CDFI (as described in 12 CFR 1805.200) for the purposes of 12 CFR part 1806 is strongly encouraged to submit the Application Form for Certification, the contents of which are described in 12 CFR 1805.701(b)(1) through (8), by Tuesday, November 23, 1999. If an entity fails to submit such application by this deadline, the Fund cannot guarantee that it will have sufficient time to complete a certification review for the purposes of the current funding round of the BEA Program. In addition, with respect to all requests for certification, the Fund reserves the right to request clarifying or technical information after reviewing materials submitted as described in 12 CFR 1805.701(b)(1) through (8). If the entity seeking certification does not respond to such requests in a timely manner, the Fund cannot guarantee that it will have sufficient time to complete a certification review for the purposes of the current funding round of the BEA Program.

ADDRESSES: Applications shall be sent to: Awards Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. Applications sent by fax or electronic transfer will not be accepted.

FOR FURTHER INFORMATION CONTACT: All questions regarding this NOFA, the application package, or BEA Program requirements should be directed to the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Washington, DC 20005, by telephone at (202) 622–8662 or by facsimile at (202) 622–7754. These are not toll free numbers. If you are requesting an application package, you must allow at least two weeks for delivery. Information on, and application materials for, the Fund's programs may also be obtained through its Website at *www.treas.gov/cdfi.*

SUPPLEMENTARY INFORMATION:

I. Background

As part of a national strategy to facilitate revitalization and increase the availability of credit and investment capital in distressed communities, the Community Development Banking and Financial Institutions Act of 1994 (''Act'') authorizes a portion of funds appropriated to the Fund to be made available for distribution through the BEA Program. The BEA Program is largely based on the Bank Enterprise Act of 1991, although Congress significantly amended the program to facilitate greater coordination with other activities of the Fund. The BEA Program and the Community Development Financial Institutions Program (12 CFR part 1805) are intended to be complementary initiatives that support a wide range of community development activities and facilitate partnerships between traditional lenders and CDFIs. This NOFA invites applications from insured depository institutions for the purpose of promoting community development activities and revitalization.

II. Eligibility

The Act specifies that eligible Applicants must be insured depository institutions as defined in 12 U.S.C. 1813(c)(2).

III. Designation of Distressed Community

In accordance with 12 CFR 1806.200(d), in the case of Applicants carrying out Qualified Activities requiring the designation of a Distressed Community (as defined in 12 CFR 1806.103(r)), the Fund will provide Applicants with data and other information to help identify areas eligible to be designated as Distressed Communities. Specifically, the Fund will provide such information through its CDFI Fund Help Desk Website, a new service that will be available as of September 1, 1999. The Fund requires all Applicants to utilize the Help Desk to produce the Distressed Community worksheets and corresponding maps.

The Help Desk is found at *www.cdfifundhelp.gov* or through a link at the Fund's main Website at www.treas.gov/cdfi. The Help Desk will provide easy step-by-step instructions on how to designate a Distressed Community. The Help Desk will allow an Applicant to instantly create and print a Distressed Community designation worksheet(s) and corresponding map(s). The Help Desk also lists a customer service telephone number that Applicants may call to ask questions.

IV. Designation Factors

Regulations codified at 12 CFR part 1806 describe the process for selecting Applicants to receive assistance and for determining award amounts. The rating and selection process will give priority to Applicants in the following order: (1) Equity Investments in CDFIs serving Distressed Communities; (2) Equity Investments in CDFIs not serving Distressed Communities; (3) CDFI Support Activities; and (4) Development and Service Activities (as such activities are defined in 12 CFR 1806.103). Assistance amounts will be calculated based on increases in Qualified Activities that occur during a 6-month Assessment Period in excess of activities that occurred during a 6-month Baseline Period. In general, estimated award amounts for applicants making Equity Investments in CDFIs will be equal to 15 percent of the projected increase in such activities. An Applicant may choose to accept less than the maximum amount of assistance in order to increase the ranking of its application. Estimated award amounts for CDFI Applicants for carrying out CDFI Support Activities will be equal to 33 percent of the projected increase in such activities. Estimated award amounts for non-CDFI Applicants for carrying out CDFI Support Activities will be equal to 11 percent of the projected increase in such activities.

The Regulations at 12 CFR part 1806 also establish the ranking and selection process. For an Applicant pursuing Development and Service Activities, a multi-step procedure is outlined in the interim rule that will be used to calculate the estimated award amount. In general, if an Applicant is a CDFI, such estimated award amount will be equal to 15 percent of the total score calculated in the multi-step procedure. If an Applicant is not a CDFI, such estimated award amount will be equal to 5 percent of the total score calculated in the multi-step procedure. In ranking and funding such Applicants within each category, the Fund will apply criteria contained in the interim rule. The Fund, in its sole discretion: (1) may adjust the estimated award amount that an Applicant may receive prior to the end of the Assessment Period; (2) may establish a maximum amount that may be awarded to an Applicant; and (3) reserves the right to limit the amount of an award to any Awardee if the Fund deems it appropriate.

V. Baseline Period and Assessment Period Dates

As part of its application, an Applicant shall report the Qualified Activities that it actually carried out during the 6-month Baseline beginning January 1, 1999 and ending June 30, 1999. An applicant shall also project the Qualified Activities that it expects to carry out during the 6-month Assessment Period beginning January 1, 2000 and ending June 30, 2000. Applicants selected to participate in the BEA Program during the Assessment Period will be required to submit to the Fund a Final Report (Part II of the Application) of Qualified Activities actually carried out during the Assessment Period. The deadline for receipt of the Final Report is 6 p.m. Eastern Daylight Time on Tuesday, August 1, 2000. Final Reports received in the offices of the Fund after that date and time will not be accepted and will be returned to the sender. The Fund will evaluate the performance of Applicants in carrying out projected activities to determine actual award amounts. The Fund may request clarifying or technical information after receiving an Applicant's Final Report.

VI. Targeted Financial Services

The lack of availability of Financial Services (as defined in the BEA Program Regulations at 12 CFR 1806.103(u)) tailored to the needs of Low-and Moderate-Income people is a significant challenge in many urban, rural and Native American communities. In an effort to encourage insured depository institutions to provide two specific types of targeted Financial Services, Electronic Transfer Accounts (''ETAs'') and Individual Development Accounts (''IDAs''), the Fund is providing the following guidance to BEA Program Applicants.

A. Electronic Transfer Accounts

On September 25, 1998, the U.S. Department of the Treasury (''Treasury'') published a final rule in the **Federal Register**, 31 CFR part 208 (the ''EFT Rule''), implementing the mandatory electronic funds transfer (''EFT'') requirements of the Debt Collection Improvement Act of 1996. The Debt Collection Improvement Act of 1996 requires Treasury to ensure that individuals required to have an account at a financial institution due to the EFT Rule have access to an account at a reasonable cost and with certain consumer protections. The EFT Rule provides that any individual who receives a Federal benefit, wage, salary, or retirement payment shall be eligible to open an electronic transfer account (''ETA'') at any Federally insured financial institution offering ETAs. Treasury subsequently published the ETA Notice (''ETA Notice'') in the **Federal Register** on July 16, 1999, setting forth the attributes for ETAs.

For purposes of this NOFA, the term ETA and all terms related to Treasury's EFT initiative that are not defined in the BEA Program Regulations shall have the same meanings as defined in the EFT Rule and the ETA Notice. Only insured depository institutions that have entered into, and are in compliance with, the Financial Agency Agreement published as an appendix to the ETA Notice may receive an award under the BEA Program for providing ETAs. An Applicant's ETA product must meet all of the requirements set forth in the ETA Notice, and any subsequent guidance issued by Treasury, and be in compliance with the terms and conditions of its Financial Agency Agreement with Treasury. Furthermore, an Applicant's ETA product must be held by individuals who are Low-or Moderate-Income Residents of Distressed Communities, as required by 12 CFR 1806.103(u). Thus, Applicants must collect data on: (1) the geographic unit in which an ETA holder resides as evidence that he or she is a Resident of a designated Distressed Community; and (2) the annual income of said ETA holder as evidence that his or her income meets Low-or Moderate-Income criteria.

As provided in the BEA Program Regulations at 12 CFR 1806.202(c)(3), all Financial Service activities must be valued ''based on the administrative costs of providing such services.'' For purposes of this NOFA, the Fund will value the administrative cost of providing an ETA at $50.00 per account. Thus, an Applicant seeking a BEA grant for ETA activities does not need to submit documentation of administrative expenses incurred in delivering its product. (However, at a later date, the Fund may distribute a survey questionnaire to Awardees for the purpose of obtaining information regarding the administrative costs incurred in the provision of ETAs.) Instead, the Applicant must indicate the number of ETAs held by Low- and Moderate-Income Residents of designated Distressed Communities, which shall be multiplied by $50.00 to yield the respective Baseline Period and Assessment Period levels of ETA activity. For purposes of this NOFA, and in keeping with 12 CFR 1806.201(b)(3)–(4) of the BEA Program Regulations, the Fund will assign a priority factor of 2.0 for establishment of ETAs held by Low- and Moderate-Income Residents of Distressed Communities.

The Fund is aware that Treasury will provide insured depository institutions that offer ETAs compensation equal to

$12.60 per ETA to offset the variable set-up costs of opening an ETA. However, the BEA award amount provided in this NOFA is intended to assist insured depository institutions to cover other costs associated with offering ETAs.

If an Applicant seeks a BEA grant for providing financial literacy classes, related training or one-on-one technical assistance to ETA holders, the Applicant must submit documentation of the costs of providing such services and report such activities as Community Service activities, as described in 12 CFR 1806.103(p).

B. Individual Development Accounts

On January 27, 1999 and July 2, 1999, the Office of Community Services of the Administration for Children and Families of the U.S. Department of Health and Human Services (''HHS'') published Program Announcements in the **Federal Register** (OCS–99–04 and OCS–99–08, respectively) to implement the Assets for Independence Demonstration Program (''IDA Program'') authorized pursuant to the Assets for Independence Act, 42 U.S.C. 604. Together, the Program Announcements state that HHS intends to provide up to $9.3 million in FY 1999 appropriated funds over five years to organizations selected to participate as Project Grantees in the IDA Program. The IDA Program is intended, among other things, to determine the extent to which Individual Development Accounts (''IDAs'') may be used to enable individuals and families with limited means to increase their economic self-sufficiency. This NOFA provides guidance to BEA Program Applicants on how IDAs can be used to serve Residents of Distressed Communities under the BEA Program.

In brief, IDAs are savings accounts for income-eligible individuals that are specifically restricted for use in activities associated with purchasing a home, obtaining post-secondary education, or capitalizing a business. IDA programs: (1) Are generally targeted to lower income individuals; (2) create savings incentives through the provision of matching funds from third parties; (3) may combine matching fund incentives with financial literacy education and other training or technical assistance; and (4) may be provided by non-profit organizations collaborating with financial institutions (which includes Insured Depository Institutions, as defined under the BEA Program) that may be acting as Trustees, Custodians or in some other capacity. Interested parties are instructed to refer to the HHS Program Announcements for further IDA Program information. Such information may be found at *www.acf.dhhs.gov/programs/ocs/99ASSETS.HTM* or through a link at the Fund's main Website at *www.treas.gov/cdfi*.

While an Applicant is not required to be a participant in the IDA Program to receive a BEA grant for its IDA activities, IDAs must meet the requirements set forth in Part IV (Section G(3) and (4)) of Program Announcement OCS–99–08.

For purposes of this NOFA, the term IDA and all terms related to the IDA Program not defined in the BEA Program Regulations shall have the same meanings as defined in the July 2, 1999 HHS Program Announcement, OCS–99–08.

For purposes of this NOFA, the Fund will presume that IDAs established for Project Participants by financial institutions, as discussed in OCS–99–08, Part IV (G)(2), benefit Low- and Moderate-Income individuals based on the requirements for Eligible Individuals described under Program Announcement OCS–99–08, Part IV G(2)(a), which states that ''[e]ligibility for participation in the demonstration projects is limited to individuals who are members of households eligible for assistance under TANF [Temporary Assistance for Needy Families] or of households whose adjusted gross income does not exceed the earned income amount described in Section 32 of the Internal Revenue Code of 1986 (taking into account the size of the household), and whose net worth as of the end of the calendar preceding the determination of eligibility does not exceed $10,000, excluding the primary dwelling unit and one motor vehicle owned by a member of the household.'' However, such Applicants must collect data on the geographic unit in which an IDA holder resides to verify that he or she is a Resident of a Distressed Community, as required by 12 CFR 1806.103(u).

In the case of Applicants that are not a participant in the HHS' IDA Program, such Applicants must collect data on: (1) the geographic unit in which an IDA holder resides to verify that he or she is a Resident of a Distressed Community; and (2) the annual income of said IDA holder to verify that his or her income meets Low- or Moderate-Income criteria.

As provided in BEA Program Regulations at 12 CFR 1806.202(c)(3), all Financial Service activities must be valued ''based on the administrative costs of providing such services.'' In order to reduce Applicants' paperwork and administrative burden, the Fund will value the administrative cost of providing an IDA at $50.00 per account. Thus, an Applicant seeking a BEA grant for IDA activities does not need to submit documentation of administrative expenses incurred in delivering its product (However, at a later date the Fund may distribute a survey questionnaire to Awardees for the purpose of obtaining information regarding the administrative costs incurred in the provision of IDAs). Instead, the Applicant must indicate the number of IDAs held by Low- and Moderate-Income Residents of Distressed Communities, which numbers shall be multiplied by $50.00 to yield the respective Baseline Period and Assessment Period levels of IDA activities. For purposes of this NOFA, and in keeping with 12 CFR § 1806.201(b)(3)–(4) of the BEA Program Regulations, the Fund will assign a priority factor of 2.0 for establishment of IDAs held by Low- and Moderate-Income Residents of Distressed Communities.

If an Applicant seeks a BEA grant for providing financial literacy classes, related training or one-on-one technical assistance to IDA holders, the Applicant must submit documentation of the costs of providing such services and report such activities as Community Service activities, as described in 12 CFR 1806.103(p). If an Applicant seeks a BEA grant for providing matching fund grants directly to IDA Program Project Participants' accounts or to Project Grantees for the purpose of providing matching fund grants to Project Participants' accounts, the Fund will consider such activity an administrative cost and it must be reported as a Community Service activity. Such an Applicant must provide documentation that such grant monies have been disbursed to Project Participants' accounts or a Project Grantee.

VII. Disbursement on Lines of Credit

This NOFA provides guidance to Applicants regarding the manner in which the Fund will obligate and disburse a BEA grant to an Awardee for a Qualified Activity that is based on a loan in the form of a line of credit or other similar credit facility. The Fund will obligate an award based on the face amount only of such a line of credit provided that it meets the requirements of a closed transaction set forth in 12 CFR 1806.202(d). The Fund will disburse such obligated amounts after it receives documentation that the Awardee has disbursed monies to the borrower under said line of credit. The Fund will make a disbursement of its award to the Awardee in amounts equal to the corresponding award amount for the Awardee's disbursement to the

borrower, up to the face amount of the line of credit.

Catalog of Federal Domestic Assistance: 21.021.

Authority: 12 U.S.C. 1834a, 4703, 4703 note, 4713; 12 CFR part 1806.

Dated: August 26, 1999.

Maurice A. Jones,

Deputy Director for Policy and Programs, Community Development Financial Institutions Fund.

[FR Doc. 99–22659 Filed 8–31–99; 8:45 am]

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September 1, 1999

Part VI

Department of Education

Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind; Notices

DEPARTMENT OF EDUCATION

Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities for fiscal year (FY) 2000 and subsequent fiscal years.

SUMMARY: The Secretary announces final funding priorities for fiscal year (FY) 2000 and subsequent fiscal years under the Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program. The Secretary takes this action to assist with the establishment of interpreter training programs or to assist ongoing programs to train a sufficient number of skilled interpreters throughout the country to meet the communication needs of individuals who are deaf and individuals who are deaf-blind by—(a) Training manual, tactile, oral, and cued speech interpreters; (b) ensuring the maintenance of the skills of interpreters; and (c) providing opportunities for interpreters to raise their level of competence.

EFFECTIVE DATE: These priorities are effective October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Lovley, U.S. Department of Education, 400 Maryland Avenue, SW., room 3217 Mary E. Switzer Building, Room 3217, Washington, DC 20202–2736. Telephone: (202) 205–9393. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 401–3664. Internet address: Mary__Lovley@ed.gov.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program is authorized under section 302(f) of the Rehabilitation Act of 1973, as amended.

On May 10, 1999 the Secretary published a notice of proposed priorities for this program in the **Federal Register** (64 FR 25140). This notice of final priorities contains three changes from the notice of proposed priorities. All three changes are to Priority 1—National Project with Major Emphasis on Distance Education as a Medium for Interpreter Training. The first change added Hawaii to the list of States that have no degree-granting interpreter training program. The second change added a requirement that a project must ensure that curricula are developed or modified with input from a culturally diverse, consumer-based consortium. The third change added a requirement that the project must evaluate the effectiveness of training interpreters using the distance education curricula. The changes are fully explained in the Analysis of Comments and Changes located elsewhere in this notice.

Note: This notice of final priorities does *not* solicit applications. In any year in which the Secretary chooses to use these priorities, the Secretary invites applications through a notice in the **Federal Register**. A notice inviting applications under these competitions is published in a separate notice elsewhere in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, 27 parties submitted comments on or before the June 9, 1999 deadline. An analysis of the comments and of the changes in the priorities since publication of the notice of proposed priorities follows. Please note that we address only those issues on which substantive comments were received. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make.

General Comments

Comments: Two commenters suggested that a priority to train educational interpreters be added.

Discussion: We recognize the importance of training interpreters to work in the educational environment. We support projects to train educational interpreters through the Personnel Preparation to Improve Services and Results for Children with Disabilities, Preparation of Special Education, Related Services, and Early Intervention Personnel to Serve Infants, Toddlers, and Children with Low-Incidence Disabilities competition (CFDA 84.029A) in the Office of Special Education Programs (OSEP). In addition, in fiscal year (FY) 1990 we supported a national project under the Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program in the Rehabilitation Services Administration (RSA) to focus on the development of a curriculum on interpreting in the educational environment. This curriculum is currently being used by OSEP educational interpreter training grantees and continues to be distributed by Northwestern Connecticut Community-Technical College and the National Clearinghouse of Rehabilitation Training Materials. Feedback received from the field is that this curriculum is still current and appropriate. Further, Priority 2 requires the use of model curricula developed by recent and current RSA-funded national interpreter training projects, including the curriculum that emphasizes interpreting in educational settings. Finally, the training conducted by the regional programs may have an impact on educational settings in addition to other settings.

Changes: None.

Comments: Two commenters supported the two proposed funding priorities, but also recommended that the Department support research on the value of educational interpreting for students who are deaf and hard of hearing at all educational levels. One commenter recommended that research be conducted to investigate the problem of how best to remedy the need for interpreters. Another commenter recommended numerous research questions regarding interpreter training and interpreter ethics and suggested that this research would best be done by a national center committed to research.

Discussion: We appreciate this support and note that the regulations in 34 CFR 396.1 define the Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program as a training program. Research is beyond the scope of this program. We will share these comments with the appropriate individuals in OSEP and the National Institute on Disability and Rehabilitation Research (NIDRR).

Changes: None.

Comments: One commenter supported the two proposed funding priorities, and two commenters recommended that the Department establish an additional priority to support the cost of establishing additional distance education sites and enhance existing technologies to allow for quality skill-based training via video technologies.

Discussion: As previously stated, the regulations for this program define it as a training program. Developing and enhancing the technological infrastructure is beyond the scope of this program.

Changes: None.

Comments: Three commenters recommended that the priorities include the provision of stipends to students.

Discussion: Training stipends are not authorized under the Training of Interpreters for Individuals Who Are

Deaf and Individuals Who Are Deaf-Blind program.

Changes: None.

Comment: One commenter indicated that there is a need for small, centrally located programs that are nationally funded to help train new interpreters and upgrade the skills of the persons working in the field.

Discussion: We recognize the need for centrally located interpreter training programs and plan to continue to support 10 regional interpreter training programs.

Changes: None.

Comment: One commenter recommended that funding needs to go to an organization or company to ensure that interpreters are current with their training and are receiving training in all aspects of interpreting and that more stringent renewal of interpreters' certification is needed.

Discussion: We believe that it is the role of the professional interpreter certifying organizations to monitor the training activities and certification requirements of the professionals in the field and not the role of the Federal Government.

Changes: None.

Priority 1—National Project with Major Emphasis on Distance Education as a Medium for Interpreter Training

Comments: Two commenters indicated that Hawaii has no degree-granting interpreter training program.

Discussion: The interpreter training program currently offered through the Office of Continuing Education and Training at Kapiolani Community College on the island of Oahu is a 2-year, non-credit, non-degree-granting program. Therefore, Hawaii should be listed among those States that do not have a degree-granting interpreter training program.

Changes: Language in the priority has been changed to include Hawaii.

Comment: One commenter stated that the proposed priority lacked formal recognition of the need for various stakeholders to collaborate and work together effectively to make needs known and devise methods or provide feedback about the appropriate technology to meet the needs in any given locality.

Discussion: We note that Priority 2—National Project with Major Emphasis on Training Interpreter Educators requires that the curricula be developed with input from a culturally diverse, consumer-based consortium. Priority 1—National Project with Major Emphasis on Distance Education as a Medium for Interpreter Training does not have such a statement, and we recognize the value of stakeholders' participation in funded activities.

Changes: We have added a statement to Priority 1 requiring that curricula be developed or modified with input from a culturally diverse, consumer-based consortium.

Comment: One commenter supported Priority 1 and recommended placing an emphasis on a specific brand of video conferencing equipment and providing general information on the most advanced and appropriate equipment.

Discussion: We refrain from making reference to specific technology or from providing descriptions of the most advanced equipment in this priority because the rate of technology advancement may render those statements obsolete prior to the start of the project.

Changes: None.

Comment: One commenter supported Priority 1 and recommended the inclusion of a statement requiring the development and implementation of strategic planning approaches focusing on collaborative working relationships between two or more higher education institutions.

Discussion: One of the requirements of the priority is to provide technical assistance, and the commenter's recommendation is one action that could fall under the required technical assistance. We do not wish to dictate any specific technical assistance activities.

Changes: None.

Comment: One commenter supported both funding priorities, but questioned the necessity of requiring the National Project with Major Emphasis on Distance Education as a Medium for Interpreter Training to be national in scope. The commenter stated that having the training project regionally or locally based may be a more effective way of recruiting, developing, and maintaining interpreters in underserved areas.

Discussion: We recognize the need for regionally based interpreter training programs and plan to continue to support 10 regional interpreter training programs.

Changes: None.

Comments: Two commenters supported both priorities, but questioned whether the technology of video conferencing is an adequate tool for teaching the signing skills necessary for quality interpreting and cautioned against replacing the mentor-student interaction needed to provide comprehensive interpreter training through practicum and fieldwork experiences.

Discussion: We recognize that video conferencing, if it were used alone, may not be an adequate tool for teaching sign language and interpreting. However, as with any distance education instruction, distance interpreter education is not limited to video conferencing technology. While the priority requires technical assistance on the proper use of the most current and available technologies, such as video conferencing, videotaping, Internet web classes and chat rooms, e-mail, and voice mail, this does not preclude the simultaneous use of non-technical approaches to distance education such as on-site mentoring, use of printed or videotaped material, association with deaf, hard of hearing, or deaf-blind individuals or groups, and practicum experiences.

Changes: None.

Comment: One commenter expressed concern about the computer and technology literacy of individuals who would be engaged in distance learning and recommended providing funds to employ geographically proximate ''circuit riders'' to address this concern.

Discussion: We recognize that the use of ''circuit riders'' is one possible approach to improving or ensuring the computer and technology literacy of individuals interested in participating in distance interpreter education opportunities. We expect that proposals will address this, among other concerns, and do not wish to prescribe any one method or approach.

Changes: None.

Comment: One commenter stated that there is no discussion of any type of evaluation or methods of measuring the effectiveness of training interpreters using the distance education curricula prior to its dissemination.

Discussion: There is a requirement to provide technical assistance to interpreter training programs on the feasibility and effectiveness of distance interpreter education. We agree with the importance of evaluating the effectiveness of training interpreters using the distance education curricula.

Changes: We have added an evaluation requirement to the priority.

Comment: One commenter stated that dissemination is a critical issue and that having the information in several different formats or ways would be beneficial.

Discussion: There is a requirement that the packaged distance education curricula be disseminated to interpreter educators nationwide. The proposals would identify how the potential projects plan to carry out this requirement.

Changes: None.

Priority 2—National Project with Major Emphasis on Training Interpreter Educators

Comments: Two commenters supported Priority 2, with one commenter requesting that this priority be weighted more heavily than Priority 1 and the other commenter requesting that the mentoring portion of this priority be given sufficient weight and earmarked funding to ensure that it is addressed.

Discussion: We appreciate this support, but note that these priorities are not assigned weights.

Changes: None.

Comment: One commenter supported both priorities including the focus on identifying and updating or developing a model mentor training curriculum and training experienced interpreters or interpreter educators to serve as mentors, but only if the rural and island areas of Hawaii will have effective use of them.

Discussion: The priority requires that the mentor training program train mentors to serve in a variety of situations or environments, including various regions and culturally diverse environments. We believe that this requirement will allow Hawaii, and other States with unique needs, to make effective use of the curriculum and the trained mentors.

Changes: None.

Comments: Two commenters supported both priorities, but suggested that Priority 2 also include curriculum for training interpreters in mental health, educational, medical, legal, and other environments requiring specialized training.

Discussion: We recognize the need for training interpreters to work in environments requiring specialized training and believe that the priority is broad enough to permit the development of curriculum, or training of interpreters, in specialized settings. However, there is no basis to require the grantee to include the settings requested by the commenter.

Changes: None.

Comment: One commenter supported both priorities, but asked that steps be taken to ensure that members of the deaf, hard of hearing, and deaf-blind communities are afforded the opportunity to participate in the training programs and, for those who are qualified, to become part of the interpreter educator staff. This commenter also requested that the material adaptation and interpreter educator training not overlook the regional and often local diversity in sign language and cultural backgrounds.

Discussion: We agree that consumer involvement is crucial to a successful program and note that the priority specifically requires that the curricula be developed with input from a culturally diverse, consumer-based consortium. We also note that the priority requires that training be available to culturally diverse audiences and be sensitive to the needs of all audiences. These culturally diverse audiences would include, among the many other forms of diversity, training available to individuals who are deaf, hard of hearing, or deaf-blind.

Changes: None.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary funds under these competitions only applications that meet one of these absolute priorities:

Priority 1—National Project with Major Emphasis on Distance Education as a Medium for Interpreter Training (84.160B)

Background: Historically interpreter training programs have been located in colleges and universities in metropolitan areas or in areas of high population. While demand for interpreter services exceeds the supply of interpreters even in metropolitan areas, the dearth of interpreters in rural areas is marked. *A Study of Interpreter Services for Persons Who are Deaf or Hard of Hearing,* published in 1993, concluded that ''there is sufficient work/need for additional professional interpreters in every state and many major communities.'' Organizations such as the National Association of the Deaf (NAD) and the Registry of Interpreters for the Deaf (RID) have also identified the shortage of qualified interpreters. Some States, such as Alaska, Hawaii, Idaho, Montana, Nebraska, Nevada, North Dakota, Rhode Island, Vermont, and West Virginia, as well as Puerto Rico, the U.S. Virgin Islands, and the Trust Territories of the Pacific other than Guam, have no degree-granting interpreter training program. Due to the relatively sparse population in large geographical areas, student enrollment may not be sufficient to support interpreter training programs should they be established in these areas. As a result, individuals living in these States or areas who are interested in obtaining interpreter training must seek that training at a great distance from their homes. Further, the few working interpreters living in these States or areas who wish to maintain or upgrade their skills often find it difficult to locate nearby sources for continuing education. Distance education can help fill this void. The challenge, however, is to effectively deliver the interpreter training curricula, which is a skill-based, visual-based curricula rather than a knowledge-based or text-based curricula. Therefore, it is of critical importance that interpreter-training curricula be modified to make the best use of a blend of all of the available technologies, such as video conferencing, Internet web classes and chat rooms, e-mail, and voice mail. With proper curricular modifications, interpreter training can be provided via distance education to rural areas, remote locations, and areas with low populations in a cost-effective manner.

RSA has determined that a national project is needed that will focus on adapting existing model interpreter training curricula used by 2-year and 4-year interpreter training programs for delivery via distance education. In addition, there is a need for technical assistance to, and coordination and cooperation with, interpreter training programs across the Nation on matters related to the use of distance education as a medium for interpreter training.

Priority: A project must—

- Be national in scope;
- Adapt or modify existing model interpreter training curricula or develop new appropriate interpreter training curricula for delivery via distance education and package it for easy use by the RSA-funded regional interpreter training projects and other trainers and interpreter training programs;
- Ensure that the curricula are developed or modified with input from a culturally diverse, consumer-based consortium;
- Evaluate the effectiveness of training interpreters using the distance education curricula;
- Develop detailed instruction manuals to accompany each packaged curriculum;
- Provide technical assistance to interpreter training programs on the feasibility and effectiveness of distance interpreter education;
- Establish cooperative working relationships with the RSA-funded regional interpreter training projects;
- Furnish technical assistance to the RSA-funded regional interpreter training projects in developing and using distance education as a mechanism for training interpreters to meet the communication needs of

individuals who are deaf, hard of hearing, or deaf-blind in their regions;

• Provide technical assistance and professional development opportunities for interpreter trainers across the Nation on the development and use of distance education as a mechanism for training interpreters to meet the communication needs of individuals who are deaf, hard of hearing, or deaf-blind. The technical assistance must address matters such as the proper use of the distance interpreter education curriculum; the proper use of the most current and available technologies, such as video conferencing, videotaping, Internet web classes and chat rooms, e-mail, and voice mail; the technical infrastructure needed to successfully conduct distance interpreter education; and the policy implications and barriers that exist in providing distance interpreter education across a State or across State lines (e.g., classification of distance education students as in-State or out-of-State, the geographic area the institution is designed to serve, etc.); and

• Disseminate the packaged distance education curricula to interpreter educators nationwide.

Priority 2—National Project with Major Emphasis on Training Interpreter Educators (84.160C)

Background: In order to train qualified interpreters, interpreter educators must be both sufficient in number and current in knowledge and best practices. There are, however, very few programs that prepare interpreter educators to teach the interpreting process and the skill of interpreting. As a result, many faculty teaching at the 100-plus interpreter training programs have had little or no opportunity to study how to teach interpretation. Further, over the last 10 years RSA has funded the development of model curricula emphasizing the interpreting needs of culturally diverse communities, deaf-blind interpreting, and interpreting in educational and rehabilitation environments. Due to the low number of programs to train interpreter educators, this curriculum is not being shared widely and, as a result, is not being used extensively.

The model curricula on interpreting in educational environments and interpreting in rehabilitation environments is available at the National Clearinghouse of Rehabilitation Training Materials at Oklahoma State University, 5202 Richmond Hill Drive, Stillwater, OK 74078–4080. The model curricula on the interpreting needs of culturally diverse communities and interpreting for individuals who are deaf-blind are being developed under currently funded projects. These curricula will be available at the National Clearinghouse of Rehabilitation Training Materials once these projects have completed their activities. The project developing the model curriculum on the interpreting needs of culturally diverse communities ends on December 31, 2000, and the project developing the model curriculum on interpreting for individuals who are deaf-blind ends on September 30, 2000.

Another aspect of training a sufficient number of qualified interpreters is the practice of mentoring. Mentors are experienced interpreters and interpreter educators who provide one-on-one technical assistance to novice interpreters or to working interpreters who wish to improve or expand their skills or work toward certification. While ''mentoring is not a substitute for comprehensive interpreter education or for the internships and practicums associated with such formal training'' (RID Standard Practice Paper on ''Mentoring''), it supports and augments the training received in those settings. While the field of interpreting embraces the use of mentoring, there is no established uniform mechanism for training individuals to serve as mentors.

In order to train a sufficient number of qualified interpreters throughout the country, there is a need to increase the number of highly trained interpreter educators and mentors. A national project is needed to address these issues.

Priority: A project must—

• Be national in scope;

• Develop a new curriculum, or update a former or existing curriculum, to prepare interpreter educators and, once this is developed, use it to train both working interpreter educators who need to obtain, enhance, or update their training and new interpreter educators. This newly developed or updated curriculum must include all issues pertinent to the training of interpreters and the use of the model curricula developed by recent and current RSA-funded national interpreter training projects that emphasize the interpreting needs of culturally diverse communities, interpreting for deaf-blind individuals, and interpreting in educational and rehabilitation environments;

• Identify and update or develop a model mentor training curriculum that includes elements such as diagnostic assessment, goal setting, discourse analysis, and effective feedback provision and, once this is developed, train experienced interpreters or interpreter educators to serve as mentors. This mentor training program must train mentors to serve in a variety of situations or environments (i.e., in urban and rural settings; in various regions; in culturally diverse environments; in situations in which various modes of communication (deaf-blind, oral, cued speech, etc.) are present; in specialized settings (legal, medical, educational, etc.); and with interns at varying skill levels, etc.);

• Provide technical assistance to organizations or bodies establishing mentorship programs and to existing mentorship programs on all aspects of mentoring, including the identification of trained mentors;

• Ensure that the curricula are developed with input from a culturally diverse, consumer-based consortium;

• Ensure that training is available to culturally diverse audiences and is sensitive to the needs of all audiences;

• Use innovative as well as traditional approaches to the provision of training (i.e., distance education, short-term intensive training sessions or seminars, delivering training to communities in need, etc.); and

• Establish cooperative relationships with the regional interpreter training projects the Secretary plans to propose in fiscal year 2000.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These priorities support the National Education Goal that, by the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The priorities further the objectives of this Goal by focusing available funds on projects that train a sufficient number of qualified interpreters throughout the country to meet the communication needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind. Training and improving the manual, tactile, oral, and cued speech interpreting skills of interpreters working in vocational rehabilitation environments will improve the ability of individuals who are deaf or hard of hearing and individuals who are deaf-blind to function successfully in their vocational pursuits.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

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(Catalog of Federal Domestic Assistance Number 84.160, Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind)

Program Authority: 29 U.S.C. 772(f).

Dated: August 27, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–22775 Filed 8–31–99; 8:45 am]

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DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.160A, 84.160B, and 84.160C]

Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program: The purpose of this program is to assist with the establishment of interpreter training programs or to assist ongoing programs to train a sufficient number of skilled interpreters throughout the country to meet the communication needs of individuals who are deaf and individuals who are deaf-blind by—(a) Training manual, tactile, oral, and cued speech interpreters; (b) Ensuring the maintenance of the skills of interpreters; and (c) Providing opportunities for interpreters to raise their level of competence.

Eligible Applicants: Public and private nonprofit agencies and organizations, including institutions of higher education, are eligible for assistance under this program.

Deadline for Transmittal of Applications: November 8, 1999.

Deadline for Intergovernmental Review: January 7, 2000.

Applications Available: September 7, 1999.

Estimated Available Funds: $2,100,000.

Estimated Range of Awards: Regional projects: $120,000 to $160,000; National Projects: $250,000 to $300,000.

Estimated Average Size of Awards: Regional projects: $140,000; National Projects: $270,800.

Estimated Number of Awards: Regional projects: 10. One project will be awarded in each of the 10 RSA regions; National projects: 2.

Note: The Department is not bound by any estimates in this notice.

Maximum Award: Regional Projects: In no case does the Secretary make an award greater than $160,000 for a single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount. *National Projects:* In no case does the Secretary make an award greater than $300,000 for a single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount.

Project Period: Up to 60 months.

Page Limit: Part III of the application, the application narrative, is where you, the applicant, address the selection criteria used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than 35 pages for regional projects and no more than 50 pages for national projects, using the following standards:

(1) A ''page'' is 8.5″×11″, on one side only with 1″ margins at the top, bottom, and both sides.

(2) You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

If you use a proportional computer font, you may not use a font smaller than a 12-point font or an average character density greater than 18 characters per inch. If you use a nonproportional font or a typewriter, you may not use more than 12 characters per inch.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

If, in order to meet the page limit, you use print size, spacing, or margins smaller than the standards specified in this notice, we will not consider your application for funding.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 396.

Priorities

National Projects (CFDA Nos. 84.160B and 84.160C): The competitions focus on projects designed to meet one or more of the priorities in the notice of final priorities for this program published elsewhere in this issue of the **Federal Register**. These priorities are as follows:

Priority 1 (CFDA No. 84.160B)—
National Project with Major Emphasis on Distance Education as a Medium for Interpreter Training

Priority 2 (CFDA No. 84.160C)—
National Project with Major Emphasis on Training Interpreter Educators

For FY 2000 each of the priorities is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet one of the priorities.

Regional Projects (CFDA No. 84.160A): For FY 2000, the competition for new awards focuses on projects designed to meet the priority in the regulations for this program (34 CFR 396.5), as follows:

Projects that provide training in interpreting skills for persons preparing to serve, and persons who are already serving, as interpreters for individuals who are deaf and as interpreters for individuals who are deaf-blind in public and private agencies, schools, and other service-providing institutions.

For FY 2000 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet the priority.

Selection Criteria: In evaluating an application for a new grant under these competitions, the Secretary uses selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR and the selection criterion in 34 CFR 396.31. The selection criteria to be used for these competitions will be provided in the application package for these competitions.

For Applications Contact: Education Publications Center (ED Pubs), PO Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its web site (http://www.ed.gov/pubs/edpubs.html) or its E-mail address (edpubs@inet.ed.gov).

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the Grants and Contracts Service Team, U.S. Department of Education, 400 Maryland Avenue, SW, room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

For Further Information Contact: Mary Lovley, US Department of Education, 400 Maryland Avenue, SW, (room 3217, Switzer Building), Washington, DC 20202–2736. Telephone: (202) 205–9393. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 401–3664.

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Program Authority: 29 U.S.C. 772(f).

Dated: August 27, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

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FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

47649–48074..... 1

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT SEPTEMBER 1, 1999

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Oranges and grapefruit grown in—

Texas; published 8-31-99

COMMERCE DEPARTMENT

Export Administration Bureau

Export administration regulations:

Exports and reexports of commercial charges and devices containing energetic materials; published 9-1-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Atlantic highly migratory species—

Large coastal shark; published 9-1-99

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Chlorfenapyr; published 9-1-99

Cymoxanil; published 9-1-99

Difenoconazole; published 9-1-99

FEDERAL COMMUNICATIONS COMMISSION

Television broadcasting:

Advanced television (ATV) systems—

Digital television service; channel allotments; impact upon exiting television service; correction; published 9-1-99

FEDERAL RESERVE SYSTEM

Credit by brokers and dealers (Regulation T):

Foreign margin stocks list; published 8-26-99

GENERAL SERVICES ADMINISTRATION

Acquisition regulations:

Revision; published 7-9-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:

Adjuvants, production aids, and sanitizers—

Phosphorothioic acid; published 9-1-99

Organization, functions, and authority delegations:

Center for Biologics Evaluation and Research; published 9-1-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

Migratory bird hunting:

Federal Indian reservations, off-reservation trust lands, and ceded lands; published 8-30-99

Seasons, limits, and shooting hours; establishment, etc.; published 8-31-99

PENSION BENEFIT GUARANTY CORPORATION

Single-employer plans:

Allocation of assets—

Interest assumptions for valuing benefits; published 8-13-99

TRANSPORTATION DEPARTMENT

Coast Guard

Boating safety:

Numbering undocumented vessels in Alaska; fee increase; published 7-6-99

TRANSPORTATION DEPARTMENT

Air travel; nondiscrimination on basis of disability:

Wheelchairs and other assistive devices; compensation for damage; published 8-2-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; published 7-28-99

Israel Aircraft Industries, Ltd.; published 8-17-99

Class D airspace; published 9-1-99

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Consumer information:

Uniform tire quality grading standards; published 5-24-99

Utility vehicle label; published 3-9-99

Utility vehicle label; rollover warning requirement

Rollover and air bag alert labels; combination in one label; published 8-30-99

Motor vehicle safety standards:

Child restraint systems—

Child restraint anchorage systems; published 8-31-99

Motor Vehicle Safety Standards:

Child restraint systems—

Standardized child restraint anchorage systems independent of seat belts; published 3-5-99

VETERANS AFFAIRS DEPARTMENT

Medical benefits:

Veterans' medical care or services; collection or recovery; published 4-27-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Almonds grown in—

California; comments due by 9-9-99; published 8-10-99

Bartlett pears (fresh) grown in—

Oregon and Washington; comments due by 9-7-99; published 8-6-99

Oranges, grapefruit, tangerines, and tangelos grown in—

Florida; comments due by 9-10-99; published 8-26-99

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animals products (quarantine):

Brucellosis in cattle and bison—

State and area classifications; comments due by 9-7-99; published 7-8-99

Plant-related quarantine, foreign:

Unmanufactured solid wood packing material; importation; comments due by 9-7-99; published 7-7-99

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Loan and purchase programs:

Dairy recourse loan program for commercial dairy processors; comments due by 9-7-99; published 7-22-99

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Food distribution programs:

Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation; comments due by 9-7-99; published 7-8-99

Food stamp program:

Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation—

Non-discretionary provisions; comments due by 9-10-99; published 7-12-99

AGRICULTURE DEPARTMENT

Rural Utilities Service

Electric loans:

Load forecasts; borrower requirements; comments due by 9-7-99; published 7-7-99

COMMERCE DEPARTMENT

Economic Analysis Bureau

International services surveys:

BE-80; benchmark survey of financial services transactions between U.S. financial services providers and unaffiliated foreign persons; comments due by 9-7-99; published 7-9-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:

Critical habitat designations—

Snake River spring/summer chinook salmon; comments due by 9-8-99; published 8-17-99

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

License limitation program; comments due by 9-7-99; published 8-6-99

Caribbean, Gulf, and South Atlantic fisheries—

Gulf of Mexico and South Atlantic coastal migratory pelagic resources; comments

due by 9-7-99; published 7-6-99
Magnuson-Stevens Act provisions—
American lobster; exempted fishing permits; comments due by 9-7-99; published 8-20-99
Northeastern United States fisheries—
Mid-Atlantic Fishery Management Council; hearings; comments due by 9-7-99; published 8-9-99

DEFENSE DEPARTMENT
Acquisition regulations:
General property, plant, and equipment; contractor reporting requirements; comments due by 9-7-99; published 7-22-99
Federal Acquisition Regulation (FAR):
Ocean transportation by U.S.-flag vessels; comments due by 9-10-99; published 7-12-99

DEFENSE DEPARTMENT
Navy Department
Attorneys practicing under cognizance and supervision of Judge Advocate General; professional conduct; comments due by 9-10-99; published 7-12-99
National Environmental Policy Act; implementation; comments due by 9-7-99; published 7-9-99

ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Pesticide products; State registration—
Hospital/medical/infectious waste incinerators constructed on or before June 20, 1996; Federal plan requirements; comments due by 9-7-99; published 7-6-99
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New York; comments due by 9-8-99; published 8-9-99
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 9-7-99; published 8-6-99
District of Columbia; comments due by 9-7-99; published 8-5-99
Minnesota; comments due by 9-7-99; published 8-6-99
Clean Air Act:
Interstate ozone transport reduction—
Nitrogen oxides budget trading program; Sections 126 and 110 rulemakings; unit-specific information for affected sources; comments due by 9-8-99; published 8-9-99
Grants and other Federal assistance:
State and local assistance—
Indian Tribes; environmental program grants; comments due by 9-7-99; published 7-23-99
State, interstate, and local government agencies; environmental program grants; comments due by 9-7-99; published 7-23-99
Hazardous waste program authorizations:
South Dakota; comments due by 9-9-99; published 8-10-99
Wisconsin; comments due by 9-7-99; published 8-5-99
Hazardous waste:
State underground storage tank program approvals—
North Carolina; comments due by 9-9-99; published 8-10-99
North Carolina; correction; comments due by 9-9-99; published 8-24-99
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Fosetyl-Al; comments due by 9-7-99; published 7-8-99
N-acyl sarcosines and sodium N-acyl sarcosinates; comments due by 9-7-99; published 7-7-99
Processing fees; comments due by 9-7-99; published 6-9-99
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 9-7-99; published 8-5-99
National priorities list update; comments due by 9-8-99; published 8-9-99
National priorities list update; comments due by 9-10-99; published 8-11-99

FARM CREDIT ADMINISTRATION
Farm credit system:
Miscellaneous amendments; comments due by 9-8-99; published 8-9-99

FEDERAL COMMUNICATIONS COMMISSION
Digital television stations; table of assignments:
Nevada; comments due by 9-7-99; published 7-19-99
Frequency allocations and radio treaty matters:
50.2-50.4 and 51.4-71.0 GHz realignment; comments due by 9-7-99; published 8-11-99
Radio broadcasting:
AM broadcasters using directional antennas; regulatory requirements reduction; comments due by 9-10-99; published 7-27-99
Radio stations; table of assignments:
Georgia; comments due by 9-7-99; published 7-23-99
Texas; comments due by 9-7-99; published 7-23-99
Vermont; comments due by 9-7-99; published 7-23-99

FEDERAL EMERGENCY MANAGEMENT AGENCY
Flood insurance program:
Insurance coverage and rates; comments due by 9-7-99; published 8-5-99
Write-your-own program—
Private sector property insurers assistance; comments due by 9-7-99; published 8-5-99

GENERAL SERVICES ADMINISTRATION
Acquisition regulations:
Revision; comments due by 9-7-99; published 7-9-99
Federal Acquisition Regulation (FAR):
Ocean transportation by U.S.-flag vessels; comments due by 9-10-99; published 7-12-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Medical devices:
Obstetrical and gynecological devices—
Female condoms classification; comments due by 9-8-99; published 6-10-99

INTERIOR DEPARTMENT
Indian Affairs Bureau
Human services:
Financial assistance and social services programs; comments due by 9-7-99; published 6-25-99

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Alabama sturgeon; comments due by 9-10-99; published 7-12-99
Hunting and fishing:
Refuge-specific regulations; comments due by 9-10-99; published 8-11-99
Migratory bird hunting:
Seasons, limits, and shooting hours; establishment, etc.; comments due by 9-7-99; published 8-27-99

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Immigration:
Aliens—
Criminal aliens in State custody convicted of nonviolent offenses; early release for removal; comments due by 9-10-99; published 7-12-99
Criminal aliens in State custody convicted of nonviolent offenses; early release for removal; correction; comments due by 9-10-99; published 7-22-99

JUSTICE DEPARTMENT
Foreign Agents Registration Act:
Lobbying Disclosure Act and Lobbying Disclosure Technical Amendments Act; technical amendments, etc.; comments due by 9-7-99; published 7-9-99

LABOR DEPARTMENT
Mine Safety and Health Administration
Coal mine and metal and nonmetal mine safety and health:
Underground mines—
Self-rescue devices; comments due by 9-7-99; published 7-27-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Ocean transportation by U.S.-flag vessels; comments due by 9-10-99; published 7-12-99

PERSONNEL MANAGEMENT OFFICE
Acquisition regulations:

Health benefits, Federal employees—
Defense Department demonstration project; comments due by 9-7-99; published 7-6-99
Health benefits, Federal employees:
Defense Department demonstration project; comments due by 9-7-99; published 7-6-99

SMALL BUSINESS ADMINISTRATION

Business loans:
Microloan program; changes; comments due by 9-10-99; published 8-11-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic operating and flight rules, etc.:
Grand Canyon National Park, AZ; special flight rules in vicinity—
Commercial air tour limitation; comments due by 9-7-99; published 7-9-99
Special flight rules area and flight free zones; modification of dimensions; comments due by 9-7-99; published 7-9-99
Reduced vertical separation minimum; comments due by 9-7-99; published 7-8-99
Airworthiness directives:
Airbus; comments due by 9-8-99; published 8-9-99
American Champion Aircraft Corp.; comments due by 9-10-99; published 8-4-99
Boeing; comments due by 9-7-99; published 7-21-99
Bombardier; comments due by 9-7-99; published 8-6-99
Eurocopter France; comments due by 9-7-99; published 7-7-99
McDonnell Douglas; comments due by 9-7-99; published 7-21-99
New Piper Aircraft, Inc.; comments due by 9-8-99; published 7-12-99
Raytheon; comments due by 9-9-99; published 8-2-99
Airworthiness standards:
Special conditions—
Boeing Model 767-400ER airplane; comments due by 9-7-99; published 7-21-99
Class E airspace; comments due by 9-7-99; published 7-21-99
VOR Federal airways; comments due by 9-8-99; published 8-9-99
VOR Federal airways; correction; comments due by 9-8-99; published 8-31-99

TRANSPORTATION DEPARTMENT

Maritime Administration

Coastwise trade laws; administrative waivers; comments due by 9-7-99; published 7-8-99

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:
Child restraint systems—
Child booster seats for older children; use in older cars; comments due by 9-7-99; published 7-7-99

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials:
Liquefied compressed gases; transportation and unloading; comments due by 9-7-99; published 7-8-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 211/P.L. 106–48

To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the ''Thomas S. Foley United States Courthouse'', and the plaza at the south entrance of such building and courthouse as the ''Walter F. Horan Plaza''. (Aug. 17, 1999; 113 Stat. 230)

H.R. 1219/P.L. 106–49

Construction Industry Payment Protection Act of 1999 (Aug. 17, 1999; 113 Stat. 231)

H.R. 1568/P.L. 106–50

Veterans Entrepreneurship and Small Business Development Act of 1999 (Aug. 17, 1999; 113 Stat. 233)

H.R. 1664/P.L. 106–51

Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999 (Aug. 17, 1999; 113 Stat. 252)

H.R. 2465/P.L. 106–52

Military Construction Appropriations Act, 2000 (Aug. 17, 1999; 113 Stat. 259)

S. 507/P.L. 106–53

Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

S. 606/P.L. 106–54

For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106–55

To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

Last List August 18, 1999

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—SEPTEMBER 1999

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
September 1	September 16	October 1	October 18	November 1	November 30
September 2	September 17	October 4	October 18	November 1	December 1
September 3	September 20	October 4	October 18	November 2	December 2
September 7	September 22	October 7	October 22	November 8	December 6
September 8	September 23	October 8	October 25	November 8	December 7
September 9	September 24	October 12	October 25	November 8	December 8
September 10	September 27	October 12	October 25	November 9	December 9
September 13	September 28	October 13	October 28	November 12	December 13
September 14	September 29	October 14	October 29	November 15	December 13
September 15	September 30	October 15	November 1	November 15	December 14
September 16	October 1	October 18	November 1	November 15	December 15
September 17	October 4	October 18	November 1	November 16	December 16
September 20	October 5	October 20	November 4	November 19	December 20
September 21	October 6	October 21	November 5	November 22	December 20
September 22	October 7	October 22	November 8	November 22	December 21
September 23	October 8	October 25	November 8	November 22	December 22
September 24	October 12	October 25	November 8	November 23	December 23
September 27	October 12	October 27	November 12	November 26	December 27
September 28	October 13	October 28	November 12	November 29	December 27
September 29	October 14	October 29	November 15	November 29	December 28
September 30	October 15	November 1	November 15	November 29	December 29